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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

TITIKSHA PAREKH, an individual; and
PATRICIA MARTINEZ, an individual;
each on their own behalf and in their
representative capacity, on behalf of all
others similarly-situated

Plaintiffs,

vs.

COLLECTION SITES, LLC, a Nevada
limited liability company; and DOES 1
through 25, inclusive,

Defendant.

Case No. 37-2021-00045276-CU-OE-CTL

**COMPLAINT FOR DAMAGES FOR
VIOLATION OF LABOR CODE §2698 Et
Seq. (Private Attorneys General Act of 2004)**

Titiksha Parekh, an individual, and Patricia Martinez, an individual, ("Plaintiffs") each on their own behalf and in their representative capacity on behalf of all others similarly situated current or former employees of Defendant, hereby bring this Complaint against Collection Sites, LLC, a Nevada limited liability company (hereinafter "Collection Sites" or "Defendant") and DOES 1 through 25, inclusive.

Plaintiffs are informed and believe and on the basis of that information and belief, allege as

1 follows:

2 **INTRODUCTION**

3 1. This action is brought pursuant to Labor Code § 2698 *et seq.* (Private Attorneys General
4 Act of 2004) (the “PAGA”) for Defendant’s violations of Labor Code §§ 200-203, 204, 226(a),
5 226.7, 510, 512, 1174 (d), 1194 (a) 2802 and applicable Industrial Wage Commission, Wage
6 Order No. 4-2001 (“IWC no. 4”) for unpaid wages, for missed and/or non-compliant, rest and
7 meal break violations, for unpaid premiums for meal and rest break violations, for failure to
8 record and maintain accurate records of all hours worked, for failure to pay overtime, for failure
9 to pay all wages when due, for failure to reimburse expenses incurred in the discharge of work
10 related duties, for failure to issue accurately itemized wage statements and for failure to pay all
11 wages due upon discharge or termination of employment, as further detailed herein.

12 2. California has enacted the PAGA to permit individuals to bring an action on behalf of
13 themselves and on behalf of others similarly situated, the Aggrieved Employees, defined below,
14 for PAGA penalties only, which is the precise and sole nature of this action.

15 3. Accordingly, Plaintiffs seek to obtain all applicable relief for Defendant’s violations under
16 the PAGA and solely for relief as permitted by PAGA- that is penalties and any other relief the
17 Court deems proper pursuant to the PAGA. Nothing this complaint should be construed as
18 attempting to obtain any relief that would not be available in a PAGA only action.

19 4. This complaint challenges Defendant’s systemic illegal employment practices resulting in
20 violations of the state provisions of the Labor Code against Plaintiffs and similarly-situated,
21 individuals who are currently or were formerly employed by Defendant full-time and part-time as
22 non-exempt and exempt employees in the State of California, (“Aggrieved Employees”) during
23 the relevant statutory period.

24 5. Plaintiffs are informed and believe and thereon allege that Defendant and DOES 1 through
25 25, jointly and severally, acted intentionally and with deliberate indifference and conscious
26 disregard to Plaintiffs’ rights by failing to pay all wages when due, failing to provide compliant
27 rest and meal breaks, failing to pay meal period and rest break premium penalties, failing to
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1 record and maintain accurate records of time work, including time worked while off the clock,
2 failing to pay overtime wages, failing to provide accurate wage statements, and failing to
3 reimburse for expenses incurred in the discharge of work related duties and failure to pay all
4 wages due upon termination of employment.

5 **THE PARTIES**

6 6. Plaintiff, Titiksha Parekh, was at all times relevant to this Complaint, an adult individual
7 employed by Defendant at their San Diego location as a full-time, hourly, non-exempt assistant
8 Covid-19 Lead Tester.

9 7. Plaintiff, Patricia Martinez is and was at all times relevant to this Complaint, an adult
10 individual employed by Defendant at their Carlsbad location as a full-time, hourly, nonexempt
11 assistant phlebotomist.

12 8. At all times relevant this Complaint, Defendant, Collection Sites, LLC, is and was a
13 Nevada limited liability company, qualified and doing business and employing persons
14 throughout California, where it employed Plaintiffs and the Aggrieved Employees.

15 9. Plaintiffs is unaware of the true names or capacities of Defendants sued herein under the
16 fictitious names DOES 1 through 25, inclusive, but pray for leave to amend and serve such
17 fictitiously named Defendants pursuant to California Code of Civil Procedure section 474 once
18 their names and capacities become known.

19 10. Plaintiffs are informed and believes, and thereon alleges, that DOES 1 through 25,
20 inclusive, are the partners, agents, owners, shareholders, managers, principals, or employees of
21 Defendant and/or were acting on behalf of Defendant.

22 11. At all times herein mentioned, Defendants, and each of them, ratified each and every act
23 or omission complained of herein. At all times herein mentioned, Defendants, and each of them,
24 aided and abetted the acts and omissions of each and all of the other Defendants in proximately
25 causing the damages herein alleged.

26 12. Plaintiffs are informed and believe, and thereon allege, that each of the Defendants are in
27 some manner intentionally, negligently or otherwise responsible for the acts, omissions,
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1 occurrences and transactions alleged herein.

2 **JURISDICTION AND VENUE**

3 8. This Court has jurisdiction of this action pursuant to the California Constitution, Article
4 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those
5 given by statute to other courts. The statutes under which this action of brought do not specify any
6 other basis for jurisdiction.

7 9. This Court has jurisdiction over the violations of the PAGA and Cal. Lab. Cod. §§ 200-
8 203, 204, 226(a), 226.7, 510, 512, 1174 (d), 1194 (a) and 2802 and applicable Wage Order No. 4-
9 2001 of the Industrial Wage Commission (“IWC No. 4”).

10 10. This Court has jurisdiction over Defendant and DOES 1 through 25, inclusive, because
11 upon information and belief, each party has sufficient minimum contacts in California or
12 otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction
13 over it by the California courts consistent with traditional notions of fair play and substantial
14 justice.

15 11. Venue is proper in this Court because, upon information and belief, the named Defendant
16 transacts business and/or has offices in this county and the acts and omissions alleged herein took
17 place in this county.

18 12. This action is brought pursuant to the PAGA. The civil penalties sought by Plaintiffs
19 exceed the minimum jurisdiction limits of the San Diego County Superior Court and will be
20 established according to proof at trial.

21 **GENERAL ALLEGATIONS**

22 13. Plaintiffs alleges that they and similarly situated employees are or were formerly
23 employed by Defendant throughout the State of California during the relevant period.

24 14. Plaintiffs was employed by Defendant from approximately October 30, 2020,
25 through approximately January 30, 2021. During the relevant statutory period, Plaintiffs
26 worked for Defendant as full-time, hourly, nonexempt employee at the Collection Site
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1 Cube Locations in Carlsbad, California. Plaintiffs provided customer service to clients and
2 facilitated nasal cavity specimens and blood drawing procedures.

3 15. Throughout the PAGA liability period, Plaintiffs and the Aggrieved Employees
4 work/worked at Collection Site Cubes locations throughout the State of California. Typical
5 job duties included activities related to daily opening, distribution of forms to customers,
6 and conducting nasopharyngeal swab and dermal puncture procedures, and running swabs
7 and specimens to the UPS center to be tested.

8 16. Plaintiffs and those similarly situated Aggrieved Employees are/were hourly,
9 exempt and nonexempt employees. As full-time nonexempt employees, Plaintiffs worked
10 regularly scheduled shifts of ten hours, four days per workweek.

11 17. The specifics of the duties performed, and the allegations herein were common to
12 the Representative Plaintiffs and the similarly situated Aggrieved Employees who held
13 part-time and full-time positions including but not limited to phlebotomists, assistant
14 phlebotomists, Covid-19 testers, and medical assistants.

15 18. During the relevant statutory period, throughout Plaintiffs' and certain of the Aggrieved
16 Employees employment they were routinely prohibited from receiving proper, timely, and
17 Labor Code compliant meal and rest breaks. During Plaintiffs and certain of the Aggrieved
18 Employees' employment, the size of the work cubes themselves and the limited available staff
19 created an environment that they were unable to take their labor code compliant meal and rest
20 breaks. Due to the peak in COVID-19, there was constantly an influx of customers making it so
21 that Plaintiffs and Aggrieved Employees would have to work through breaks and help other
22 coworkers due to the limited staff.

23 19. Defendant is/was well aware that there was inadequate staffing due to the
24 complaints from Plaintiffs and Aggrieved Employees about the constant influx of
25 customers and because there were no other employees to relieve them to take their breaks.
26 Due to the inadequate staffing, Defendant required Plaintiffs and the Aggrieved Employees
27 to skip their rest breaks. Defendants acknowledge their practice of not providing complaint
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1 rest breaks in their written policies, more specifically their employee handbook which
2 states "...while you are on your short breaks, you may be asked to return early so you can
3 assist your team.".

4 20. In addition, on many occasions when the cubes were particularly busy, Plaintiffs
5 and similarly situated Aggrieved Employees were forced to forego their meal breaks. This
6 practice is also a policy of Defendant, which is also addressed in their employee handbook
7 which states, "[i]f your shift is less than 8 hours long, do not clock out and take a meal
8 break." Defendant's own handbook instructs Plaintiffs and the Aggrieved Employees from
9 their labor code compliant meal breaks.

10 21. These missed and on-duty rest and meal breaks were never recorded nor
11 compensated by Defendant. Defendant's operational priority and focus was/is on ensuring
12 all employees were on call and on duty at all times due to inadequate staffing and ensuring
13 fast as possible testing times due to large influxes of customers throughout the day.
14 Maintaining accurate records of the actual hours Plaintiffs and the Aggrieved Employees
15 were working and paid were of far lesser concern, let alone the maintenance of accurate
16 record keeping with regard to missed and non-compliant rest and meal break periods and
17 premium pay owed to their employees in lieu thereof.

18 22. At no time did the Plaintiffs ever sign a valid meal break waiver. Despite
19 Defendant's full knowledge that their operational policies and procedures effectively
20 impeded their nonexempt employees from taking a rest break after working for four hours
21 or a major fraction thereof, or from taking a duty-free meal break of 30 minutes after the
22 fifth hour of labor worked, at no time has Defendant ever paid Plaintiffs or the Aggrieved
23 Employees premium pay to which they were lawfully entitled each time they were not
24 provided with their breaks. Nor did or has Defendant compensated them for every hour
25 they actually worked during those rest and meal break periods.

26 23. Although Defendant has facially valid written rest and meal break policies, due to
27 the foregoing working conditions, in operational practice and reality, Defendant actively
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1 impeded and failed to relieve Plaintiffs and the Aggrieved Employees of all duties and
2 relinquish all control, to allow them the opportunity to take a 10-minute rest break for
3 every four hours or major fraction thereof worked, let alone a 30-minute duty free meal
4 break after each five-hour work period.

5 24. Due to Defendant's policies of asking Plaintiffs and the Aggrieved Employees back
6 from break, Plaintiffs and the Aggrieved Employees often were required to work off-the-
7 clock while still clocked out on break. Even when Plaintiffs and the Aggrieved Employees
8 were on the clock, Defendant had a policy of not paying overtime when shifts exceeded
9 eight hours per day or forty hours per week. Defendant's own handbook states, "[w]hile
10 some employers pay overtime if you work more than 8 hours in a single day, we do not do
11 this." Consequently, overtime hours worked and overtime wages due are/were never
12 recorded or compensated.

13 25. In failing to account and compensate with accuracy, all of the hours worked by
14 Plaintiffs and the Aggrieved Employees, including overtime hours they worked due to
15 interrupted meal breaks or shifts exceeding eight hours per day or forty hours per week,
16 and by failing to record and pay premium pay for missed/non-complaint rest and meal
17 break violations, Defendant consequently also failed to furnish them with accurate wage
18 statements pursuant to the requirements of Labor Code § 226 by failing to accurately
19 record Plaintiffs and the Aggrieved Employees' respective (1) gross wages earned, (2) net
20 wages earned, and (3) all applicable hours worked during each and every pay period,
21 during the statutory period, along with the correct hourly rates of pay.

22 26. Furthermore, the logistics of Plaintiffs and the Aggrieved Employees jobs
23 necessitated the use of a cell phone. Plaintiffs and the Aggrieved Employees are/were daily
24 required to utilize their personal cell phones to communicate and text managers and
25 colleagues throughout their working shifts. In fact, in the Defendant's handbook states,
26 "...we actually encourage you to keep your cell phone handy, as that's how we're all able
27 to quickly reach one another." Personal cell phones are/were used to communicate
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1 vaccination data, including but not limited to, customer totals and intake, coordinating with
2 other employees, contacting FedEx for specimen drop off, , and other work-related issues.
3 In addition, Plaintiffs and the Aggrieved Employees used their personal cell phones to take
4 photos of their cubes and assigned workstations to send to their managers. Plaintiffs and
5 Aggrieved Employees were also required to download the *Home Base* application to check
6 their work schedules. Defendant has never reimbursed Plaintiffs or the Aggrieved
7 Employees for the expenses they necessarily incurred in the discharge of their job duties
8 during the relevant statutory period.

9 27. Additionally, Defendant required Plaintiffs and certain of the Aggrieved Employees
10 to travel in their personal vehicles to the closest local UPS storefronts within the vicinity to
11 drop off vials of the daily specimens collected. Defendant has never reimbursed Plaintiffs and
12 certain of the Aggrieved Employees for the mileage or travel expenses associated with the
13 employer-mandated travel necessary to drop off collected specimens at UPS locations. Despite
14 Defendant in form having a reimbursement policy, as discussed in their handbook which states,
15 "...if you have to spend money out of our own pocket something that would normally be
16 covered by the company, you will be reimbursed the next time payroll is processed", Plaintiffs
17 and Aggrieved Employees never received the reimbursement per the substance of Defendants
18 guidelines. Plaintiffs and the Aggrieved Employees were not provided with reimbursement
19 forms and were told by supervisors they would not be reimbursed.

20 28. Further, Plaintiffs and the Aggrieved Employees were not supplied with personnel
21 protective equipment ("PPE") such as gloves, face mask and disinfectant by Defendant. Do to
22 handling hazardous bodily fluids, Plaintiffs and the Aggrieved Employees were required by
23 state and federal safety regulations to wear PPE. Plaintiffs and the Aggrieved Employees
24 would request PPE from Defendant, Defendant would refuse to provide PPE and Plaintiffs and
25 the Aggrieved Employees were/are required to purchase such PPE supplies themselves. Despite
26 Defendant's rules and procedures in their employee handbook, Defendant has never provided
27 Plaintiffs or the Aggrieved Employees with any reimbursement forms to reimbursed Plaintiffs
28 or the Aggrieved Employees for the expenses they incurred for the purchase of PPE which was

1 necessary to the discharge of their job duties.

2 29. As alleged supra, Plaintiffs and certain of the Aggrieved Employees ceased
3 employment with Defendant during the statutory PAGA period. At the time of the
4 separation, each of these individuals were entitled to be paid all wages due for all the hours
5 each of them respectively worked, but to date, Plaintiffs nor the formerly employed
6 Aggrieved Employees have received such compensation.

7 **FIRST CAUSE OF ACTION**
8 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT OF 2004,**
9 **LABOR CODE § 2698 ET SEQ.**
10 **(Against Defendant and DOES 1 through 25, inclusive)**

11 30. Plaintiffs reallege and incorporate by reference, all of the foregoing paragraphs, as
12 though fully set forth herein.

13 31. The PAGA expressly establishes that any provision of the California Labor Code, which
14 provides for a civil penalty, to be assessed and collected by the Labor and Workforce
15 Development Agency (the “LWDA”), or any of its departments, divisions, commissions, boards,
16 agencies or employees for a violation of the California Labor Code, may be recovered through a
17 civil action brought by an aggrieved employee on behalf of himself or herself, and other current
18 or former employees.

19 32. Plaintiffs, by their current and past employment relationships with Defendant and
20 Defendant’s violations of the Labor Code alleged herein, is an Aggrieved Employee withstanding
21 to bring an action under the PAGA.

22 33. On March 29, 2021, Plaintiffs provided written notice to the LWDA and Defendant of the
23 specific provisions of the Labor Code Plaintiffs contend were violated, and the theories
24 supporting their contentions. A true and correct copy of the March 29, 2021, notice is attached
25 hereto as **Exhibit A**. More than sixty-five days have elapsed since Plaintiffs provided notice to
26 the Defendant and the LWDA. To date, Plaintiffs have not received a response from the LWDA
27 indicating its intent to investigate Plaintiffs’ claims.

28 34. Plaintiffs, by virtue of **Exhibit A** have satisfied all prerequisites to serve as representatives

1 of the general public to enforce California's labor laws including, without limitation, the penalty
2 provisions identified in Labor Code § 2699.5. Since the LWDA took no steps within the time
3 period required to intervene and because Defendant took no corrective action to remedy the
4 allegations set forth above, Plaintiffs, as a representative of the people of the State of California,
5 will seek any and all penalties otherwise capable of being collected by the Labor Commission
6 and/or the DLSE. This includes each of the following, as is set forth in Labor Code § 2699.5,
7 which states:

8 "The provisions of subdivision (a) of Section 2699.3 apply to any alleged
9 violation of the following provisions: subdivision (k) of Section 96, Sections
10 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1,
11 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213,
12 Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections
13 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231,
14 subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233,
15 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5,
16 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8,
17 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025,
18 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174,
19 Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section
20 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5,
21 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1,
1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections
1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25,
1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of
subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of
Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776,
1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections
2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and
Sections 3095, 6310, 6311, and 6399."

22 35. Plaintiffs are informed and believe and thereupon allege that Defendant has violated and
23 continues to violate the provisions of the Labor Code and applicable Wage Order.

24 36. Pursuant to Labor Code section 2699, any provision of the Labor Code that already
25 provides a civil penalty to be assessed and collected by the LWDA, or any of its departments,
26 divisions, commissions, boards, agencies or employees for violation of the code or does not
27 provide a civil penalty may be recovered through a civil action brought by an aggrieved employee
28 on behalf of himself or herself, and other current or former employees pursuant to the procedures

1 set forth in Labor Code section 2699.3.

2 37. Plaintiffs, each on their own behalf, and on behalf of the other similarly situated
3 Aggrieved Employees are “aggrieved employees” as defined by California Labor Code § 2699(c)
4 in that they were employed by the violators (the. named Defendant herein and their related Doe
5 affiliates and subsidiaries), during the one-year statutory time period and during such time period,
6 were subjected to one of more violations, including Labor Code sections 200-203, 204, 226(a),
7 226.7, 510, 512, 1174 (d), 1194 (a) 2802 and applicable Industrial Wage Commission, Wage
8 Order No. 4-2001 (“IWC no.4”) and are therefore properly suited to represent the interests of
9 PAGA persons.

10 38. Plaintiffs are informed and believe that Defendant has violated and continues to violate
11 provisions of the Labor Code and applicable Wage Order no. 4. Despite mailing of **Exhibit A** at
12 least 65-days prior to the filing of this Complaint, the LWDA did not notify Plaintiffs that it
13 intends to investigate the alleged Labor Code violations identified in **Exhibit A**, such that, by
14 operation of law Plaintiffs are entitled to commence this cause of action as a representative action
15 under PAGA. *See Lab. Code 2699.3(a)(2)(A)*.

16 17 **Failure to Pay Wages**

18 39. Labor Code § 200(a) defines “wages” as “all amounts for labor performed by employees
19 of every description, whether the amount is fixed or ascertained by the standard of time, task,
20 piece, commission basis, or other method of calculation.”

21 40. Under Labor Code § 1194, employees must be separately paid an hourly wage for each,
22 and every hour worked, including time worked while off the clock.

23 41. Plaintiffs were at all times protected by California’s laws and regulations protecting
24 employees’ entitlement to be paid and presumption to be paid all wages earned for labor
25 performed, including an hourly wage for each and every hour worked.

26 42. As set forth above, California law requires employers, such as Defendant to pay a
27 separate hourly wage to all nonexempt employees for each and every hour worked. Labor Code
28 § 1194 provides that employees are entitled to wages and compensation for work performed, at

1 the legal rate, including straight time, overtime, and double time.

2 43. At all relevant times herein, Defendant was required to compensate Plaintiffs for all
3 hours worked pursuant to Labor Code § 1194.

4 44. By uniformly impeding Plaintiffs and the Aggrieved Employees from taking their
5 lawfully entitled rest and meal breaks, through which they were forced to work, yet failing to
6 record and compensate them for such hours they worked, including overtime, Defendant was
7 able to skim wages from Plaintiffs and the Aggrieved Employees by not paying them a separate
8 hourly wage for each and every hour worked.

9 45. Through their unlawful and illegal policies and practices, Defendant failed to pay
10 Plaintiffs and similarly situated Aggrieved Employees all wages owed to them during the
11 relevant time period.

12 **Failure to Timely Pay Wages When Due**

13 46. Pursuant to Labor Code Section 204, all wages earned by Plaintiffs and the Aggrieved
14 Employees were and are "due and payable twice during each calendar month, on days
15 designated in advance by the employer as regular paydays." For "[l]abor performed between
16 the 1st and 15th days, inclusive of any calendar month" payment is due no later than the 26th
17 day of the month. "...For labor performed between the 16th and the last day, inclusive, of any
18 calendar month, payment is due no later than the 10th day of the following month..." By failing
19 to pay Plaintiffs and the Aggrieved Employees all wages due, Defendant deprived them of
20 timely payment of all wages earned, when due and owing at these regularly scheduled intervals
21 throughout their employment in violation of Labor Code Section 204.

22 **Failure to Pay Overtime Wages**

23 47. At all times relevant herein, Defendant was required to compensate its non-exempt
24 employees' wages for all hours worked, including overtime wages for all hours worked in excess
25 of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the statutory mandates
26 of Labor Code §§ 510, 1194, 1198 and IWC No. 4.

27 48. At all times relevant herein, Defendant was required to compensate non-exempt
28 employees at a rate of one and one-half times their respective regular rates of pay for hours

1 worked in excess of eight hours in a single day, or for the first eight hours worked on the seventh
2 workday in a workweek, and double their respective hourly rates of pay for any work performed
3 in excess of eight hours on the seventh workday in a workweek, therefore; working in excess of
4 40 hours in any one workweek, pursuant to Labor Code §§ 510 and 1198.

5 49. As a pattern and practice, Defendant failed to compensate Plaintiffs and the Aggrieved
6 Employees for all hours worked, including hours worked off-the-clock during rest and meal break
7 periods, resulting in a failure to pay all wages due, including overtime wages earned.

8 Furthermore, Defendant's overtime rules and regulations states "While some employers pay
9 overtime if you work more than 8 hours in a single day, we do not do this" further perpetuating
10 the failure to compensate Plaintiffs and Aggrieved employees for all hours worked.

11 50. Defendant has thus failed to compensate Plaintiffs and the Aggrieved Employees overtime
12 wages they were due.

13 **Failure to Provide Meal Periods and Rest Breaks**

14 51. In accordance with Labor Code §§ 226.7, 512 and IWC No. 4 Sections 11 and 12,
15 Defendant was required to authorize and permit their non-exempt employees to take a 10-minute
16 rest break for every four (4) hours worked or major fraction thereof and was further required to
17 provide their non-exempt employees with a 30-minute, duty free meal period for every five (5)
18 hours worked. Failure to provide an employee with their rest and meal breaks under these
19 provisions requires an employer to pay the employee one (1) hour of premium pay at the
20 employee's regular hourly rate of compensation for each workday that the rest or meal break
21 periods are/were not provided.

22 52. As a pattern and practice, Defendant failed to relinquish control and provide Plaintiffs
23 and the Aggrieved Employees with lawful, labor code compliant timely, duty-free meal periods
24 and rest breaks and failed to comply with the labor code and IWC No. 4 requirements to pay
25 proper premium pay penalties for the violations that occurred throughout the statutory period.
26 Moreover, Defendants rules and procedures, outlined in their *Collections Site Employee*
27 *Handbook* states "...while you are on your short breaks, you may be asked to return early so
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1 you can assist your team.” Defendants restricted Plaintiffs and Aggrieved Employees rest
2 breaks and further hindered employee’s meal breaks with the rule as stated in Defendant’s
3 handbook that “[i]f your (employees) shift is less than 8 hours long, do not clock out and take a
4 meal break” which is in violation of Labor Code §§ 226.7, and 512 and IWC No. 4 Sections 11
5 and 12.

6 **Failure to Maintain Accurate Records of Hours Worked and Wages Paid**

7 53. California Labor Code § 1174 (d), which was in force and effect at all relevant times
8 herein, provides in pertinent part, that “Every person employing labor in this state shall keep...
9 “at a central location in the state or at the plants or establishments at which employees are
10 employed, payroll records showing the hours worked daily by and the wages paid to, and the
11 number of piece-rate units earned by and any applicable piece rate paid to, employees
12 employed at the respective plants or establishments. These records shall be kept in accordance
13 with rules established for this purpose by the commission, but in any case, shall be kept on file
14 for not less than three years. An employer shall not prohibit an employee from maintaining a
15 personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

16 54. As a result of and in addition to Defendant’s various Labor Code violations,
17 Defendant failed to track and record the time that Plaintiffs and the Aggrieved Employees
18 were working while off-the-clock or to track and record missed rest and meal break periods
19 and premium pay owed in lieu of the missed breaks. Therefore, Defendant failed to maintain
20 accurate records of all hours that the Plaintiffs and the Aggrieved Employees worked, in
21 violation of their statutory obligation to maintain accurate records showing all hours worked
22 daily and accurate corresponding wages for all hours worked in violation of section 1174(d).

23 **Failure to Provide Complete and Accurate Wage Statements**

24 55. At all relevant times hereto, Labor Code section 226(a) was in full force and effect and
25 provides that, semimonthly or at the time of each payment of wages an employer shall, “furnish
26 each of [its] employees, either as a detachable part of the check, draft, or voucher paying the
27 employee’s wages, or separately when wages are paid by personal check or cash, an itemized
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1 statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ...
2 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9)
3 all applicable hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each hourly rate by the employee.”

5 56. As a result of Defendant’s operational procedures, policies, and practices, and the various
6 Labor Code violations alleged herein, Defendant failed to keep accurate records and failed in their
7 affirmative obligation to provide Plaintiffs and the Aggrieved Employees with accurately
8 itemized wage statements that correctly and accurately reflected the true total number of hours
9 each of them actually worked during each and every pay period, their gross wages earned, all
10 deductions, and net wages earned, along with their applicable corresponding hourly rates,
11 including premium pay for missed rest and/or meal breaks and including overtime rates for each
12 respective hourly rate of overtime worked. The inaccurate wage statements were not caused by
13 inadvertent and occasional clerical mistakes, but rather were the result of pre-determined,
14 deliberate and uniform policies and practices of Defendant.

15 **Failure to Reimburse Expenses Incurred in the Discharge of Work-Related Duties**

16 57. At all times relevant, California Labor Code section 2802 was in force and effect. Section
17 2802(a) provides in pertinent part that: “An employer shall indemnify his or her employee for all
18 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
19 of his or her duties ...”

20 58. As alleged above, Defendant require or required as a condition of employment that
21 Plaintiffs and the Aggrieved Employees utilize their personal cell phones in the daily and routine
22 discharge of their duties to communicate with supervisors, send pictures to supervisors, download
23 an app, and in conducting work related duties and communications in the execution of job
24 functions, without reimbursement for their cell phone expenses. Defendant’s own handbook
25 pressed the importance of personal cellphone use stating “...we actually encourage you to keep
26 your cell phone handy”. Furthermore, Plaintiffs and certain of the Aggrieved Employees also
27 incurred travel expenses to drive to UPS location to deliver collected for testing. The daily travel
28 for such travel often involved driving round trips of 14 miles per day in order to deposit specimen

1 samples by the 4pm deadline, yet Defendant failed to reimburse them for their travel/work-related
2 mileage expenses. Defendant also did not reimburse for mandatory PPE gear that Plaintiffs and
3 the Aggrieved Employees had to use daily while collecting and testing Covid-19 samples.

4 59. As a direct result of Defendant's conduct in not reimbursing Plaintiffs and the Aggrieved
5 Employees for their work-related expenses necessarily incurred in the discharge of their job
6 duties, Defendant has violated Labor Code Section 2802.

7 **Failure to Pay Wages Due Upon Termination or Separation**

8 60. Labor Codes §§ 201 and 202 require employers such as Defendant to pay their
9 employees all wages due at the time of termination or discharge within the time specified by
10 law.

11 61. At all times relevant, Labor Code § 201 provides that if an employer discharges an
12 employee, the wages earned and unpaid at the time of discharge are due and payable
13 immediately.

14 62. At all times relevant, Labor Code § 202 provides that if employees not having a written
15 contract for a definite period quits their employment, their wages shall become due and payable
16 no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their
17 intention to quit, in which case the employee is entitled to their wages at the time of quitting.

18 63. At all times relevant, Labor Code § 203 provides that an employer who willfully fails to
19 pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an
20 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
21 from the due date thereof at the same rate until paid or until an action therefore is commenced,
22 up to a maximum of thirty (30) calendar days.

23 64. As alleged supra, Plaintiffs and certain of the Aggrieved Employees ceased employment
24 with Defendant during the stator PAGA period. At the time of separation, each of these
25 individuals were entitled to be paid all wages each was due for all the hours each of them
26 respectively worked, but to date, Plaintiffs, nor the formerly employed Aggrieved Employees
27 have received such compensation.

28 65. Due to the foregoing described failure of Defendant to pay Plaintiffs and the Aggrieved

1 Employees who were discharged or who voluntarily quit during the relevant period all
2 outstanding wages due upon their separation of employment, Defendant also violated the Labor
3 Code § 201-203.

4
5 **Damages**

6 66. Defendant's actions constitute continuing and ongoing unlawful activities prohibited by
7 the California Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

8 67. Pursuant to California Labor Code § 2699, Plaintiffs request and are entitled to recover
9 from Defendant civil penalties in the amount of a hundred dollars (\$100) for each aggrieved
10 employee per pay period for the initial violation, and two hundred dollars (\$200) for each
11 aggrieved employee per pay period for each subsequent violation; and attorneys' fees and costs
12 pursuant to Labor Code § 2699(g) and any other applicable statute.

13 68. As alleged supra, notice of these violations were provided pursuant to Labor Code
14 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days
15 have passed since notice was provided and Plaintiffs have not received any notification from the
16 LWDA that it intends to investigate the alleged violations. Therefore, the representative
17 Plaintiffs are entitled to prosecute the PAGA claims under Labor Code §2699, et seq.

18 69. The proper measure of damages and penalties under the PAGA is as to all Aggrieved
19 Employees, whether a part of this action or not. Further this claim needs no certification to
20 proceed with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

21 70. Accordingly, Plaintiffs respectfully request that the Court award judgment and relief in
22 their favor including civil penalties under California Labor Code §2699 in the amount of one
23 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,
24 and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each
25 subsequent violation during the relevant period, according to proof.

26 71. Plaintiffs as the personal representatives of the Aggrieved Employees, will and does seek
27 to recover civil penalties for each and every violation shown to exist or to have occurred during
28

1 the liability period, in an amount according to proof, as to those penalties that are otherwise only
2 available to public agencies. Said fund recovered will be distributed in accordance with the
3 PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of
4 California and the LWDA.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, the representative Plaintiffs, pursuant to PAGA, pray for judgment as
7 follows:

8 1. Upon the PAGA Cause of Action, for civil penalties pursuant to statute as set forth in
9 Labor Code § 2698 *et seq.*, for Defendant's violations of Labor Code §§ 201-204, 226(a), 226.7,
10 510, 512(a), 1174(d), 1194, and 2802 and applicable IWC No. 4-2001.

11 2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §
12 2699.3; and

13 3. For such other and further relief the Court may deem just and proper.
14

15 Dated: October 23, 2021

WHITEHEAD EMPLOYMENT LAW

17 By: 

18 Jacob N. Whitehead, Esq.
19 Meghan N. Highday, Esq.
20 Attorneys for Plaintiffs and
21 The Aggrieved Employees
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