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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NAPA

MARIA HERNANDEZ, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other non-party
Aggrieved Employees,

Plaintiff,

vs.

EXCEL BUILDING SERVICES LLC, a
California limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 21CV001022

**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 Maria Hernandez, 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
9 of 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
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on May 13, 2021, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

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
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

1 4. Venue is proper in this Court, because Defendants employ or employed persons
2 within the County of Napa, and have violated the requirements of the California Labor Code
3 and applicable Wage Order in this county which give rise to the penalties sought in this
4 action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of
5 the California Labor Code and the applicable Wage Order in at least one location within the
6 County of Napa, including Defendants' client's IKEA warehouse location in American
7 Canyon (1 Middleton Way, American Canyon, California 94503). Pursuant to California
8 Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by
9 statute in the county in which the cause, or some part of the cause, arose. Because Defendants
10 have employees in Napa County, and Plaintiff could bring an action filed under PAGA in any
11 county in which an aggrieved employee worked and Labor Code violations occurred, venue is
12 proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal.
13 App. 5th 1069 (2021).

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

18 **THE PARTIES**

19 6. Plaintiff Maria Hernandez is a resident of American Canyon, in Napa County,
20 California. Defendants employed Plaintiff as an hourly paid, non-exempt Janitor from
21 approximately March 2018 to September 2020. Plaintiff worked for Defendants at their client
22 IKEA's warehouse located in American Canyon, California. During her employment,
23 Plaintiff typically worked eight (8) or more hours per day, five (5) days per week, from 4:00
24 a.m. to 12:00 p.m. At the time Plaintiff's employment with Defendants ended, she earned
25 approximately \$15.00 per hour. Her job duties included, without limitation, cleaning the
26 bathrooms, offices, and warehouse.

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

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

11 8. EXCEL BUILDING SERVICES LLC was and is, upon information and belief,
12 a California limited liability company, and at all times hereinafter mentioned, an employer
13 whose employees are engaged throughout this county and the State of California.

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

18 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
19 were the partners, agents, owners, or managers of EXCEL BUILDING SERVICES LLC at all
20 relevant times.

21 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
22 acts and omissions alleged herein was performed by, or is attributable to, EXCEL BUILDING
23 SERVICES LLC and/or DOES 1 through 10 (collectively, "Defendants" or "EXCEL"), each
24 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
25 each of the other co-Defendants and was acting within the course and scope of such agency,
26 employment, joint venture, or concerted activity with legal authority to act on the others'
27 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
28 policy of Defendants.

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

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

8 **PAGA REPRESENTATIVE ALLEGATIONS**

9 14. Defendants provide cleaning services for commercial, industrial, professional,
10 and retail facilities throughout the United States. Upon information and belief, Defendants
11 maintain a single, centralized Human Resources (“HR”) department at their corporate
12 headquarters in Pleasanton, California, which is responsible for the recruiting and hiring of
13 new employees, and communicating and implementing Defendants’ company-wide policies,
14 including timekeeping policies and meal and rest period policies, to employees throughout
15 California.

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

23 16. Upon information and belief, Defendants maintain a centralized Payroll
24 department at their corporate headquarters in Pleasanton, California, which processes payroll
25 for all non-exempt, hourly paid employees working for Defendants at their various locations
26 and jobsites in California, including Plaintiff and other non-party Aggrieved Employees.
27 Based upon information and belief, Defendants issue the same formatted wage statements to
28 all non-exempt, hourly paid employees in California, irrespective of their work locations.

1 Upon information and belief, Defendants process payroll for departing employees in the same
2 manner throughout the State of California, regardless of the manner in which each employee's
3 employment ends.

4 17. Defendants continue to employ non-exempt or hourly paid employees in
5 California.

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

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

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

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

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

28 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

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

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

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

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

26 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 timely payment of all wages earned upon termination of employment. In violation of the

1 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
2 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
3 and/or meal and rest period premiums, within permissible time periods.

4 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 timely payment of wages during their employment. In violation of the California Labor Code,
7 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
8 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
9 premiums, within permissible time periods.

10 29. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
11 should have known that they had a duty to cover the costs and expenses Plaintiff and other
12 non-party Aggrieved Employees incurred obtaining mandatory examinations and/or drug tests,
13 but willfully, knowingly, and intentionally failed to do so.

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

19 31. Plaintiff is informed and believes and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
21 and other non-party Aggrieved Employees with safety devices and safeguards to protect their
22 life, safety, and health in the workplace, but willfully, knowingly, and intentionally failed to
23 do so.

24 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate
26 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
27 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
28 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees

1 that they were properly denied wages, all in order to increase Defendants' profits.

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

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

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

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

- 17 (a) The aggrieved employee shall give written notice by online filing
18 (hereinafter "Employee's Notice") to the LWDA and by certified mail
19 to the employer of the specific provisions of the California Labor Code
20 alleged to have been violated, including the facts and theories to support
21 the alleged violations.
- 22 (b) An aggrieved employee's notice filed with the LWDA pursuant to
23 2699.3(a) and any employer response to that notice shall be
24 accompanied by a filing fee of seventy-five dollars (\$75).
- 25 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
26 employer and the aggrieved employee by certified mail that it does not
27 intend to investigate the alleged violation within sixty (60) calendar
28 days of the postmark date of the Employee's Notice. Upon receipt of

1 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
2 five (65) calendar days of the postmark date of the Employee's Notice,
3 the aggrieved employee may commence a civil action pursuant to
4 California Labor Code section 2699 to recover civil penalties in addition
5 to any other penalties to which the employee may be entitled.

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

- 10 (a) The aggrieved employee or representative shall give written notice by
11 online filing to the LWDA and by certified mail to the employer of the
12 specific provisions of the California Labor Code alleged to have been
13 violated (other than those listed in Section 2699.5), including the facts
14 and theories to support the alleged violation.
- 15 (b) An aggrieved employee's notice filed with the LWDA pursuant to
16 2699.3(c) and any employer response to that notice shall be
17 accompanied by a filing fee of seventy-five dollars (\$75).
- 18 (c) The employer may cure the alleged violation within thirty-three (33)
19 calendar days of the postmark date of the notice. The employer shall
20 give written notice by certified mail within that period of time to the
21 aggrieved employee or representative and the agency if the alleged
22 violation is cured, including a description of actions taken, and no civil
23 action pursuant to Section 2699 may commence. If the alleged violation
24 is not cured within the 33-day period, the employee may commence a
25 civil action pursuant to Section 2699.

26 38. On May 13, 2021, Plaintiff provided written notice by online filing to the
27 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
28 Code alleged to have been violated, including facts and theories to support the alleged

1 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
2 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
3 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
4 Plaintiff PAGA Case Number LWDA-CM-832135-21. A true and correct copy of Plaintiff's
5 written notice to the LWDA and Defendants dated May 13, 2021, is attached hereto as
6 "Exhibit 1."

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

10 40. Thus, Plaintiff has satisfied the administrative prerequisites under California
11 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
12 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 222.5, 510,
13 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

14 41. Labor Code section 558(a) provides "[a]ny employer or other person acting on
15 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
16 provision regulating hours and days of work in any order of the Industrial Welfare
17 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
18 dollars (\$50) for each underpaid employee for each pay period for which the employee was
19 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
20 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
21 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
22 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
23 as a private attorney general, seeks assessment and collection of civil penalties under Labor
24 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
25 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
26 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
27 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
28 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the

1 applicable IWC Wage Order.

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

6 43. As set forth below, Defendants have violated numerous provisions of both the
7 California Labor Code sections regulating hours and days of work as well as the applicable
8 IWC Wage Order.

9 44. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
10 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
11 private attorney general, seeks assessment and collection of civil penalties for herself, all other
12 non-party Aggrieved Employees, and the State of California against Defendants for violations
13 of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516,
14 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

15 **FIRST CAUSE OF ACTION**

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

17 **(Against all Defendants)**

18 45. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 46. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
21 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
22 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
23 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section
24 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
25 violations of those Labor Code sections not found in section 2699.5, including sections 516,
26 1182.12, 6401, and 6403.

27 47. Defendants' conduct, as alleged herein, violates numerous sections of the
28 California Labor Code, including, but not limited to, the following:

- 1 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
2 Wage Order for Defendants' failure to compensate Plaintiff and other
3 non-party Aggrieved Employees with all required overtime pay and
4 failure to properly calculate the overtime rates paid to other non-party
5 Aggrieved Employees, as set forth below;
- 6 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
7 the applicable IWC Wage Order for Defendants' failure to compensate
8 Plaintiff and other non-party Aggrieved Employees with at least
9 minimum wages for all hours worked as set forth below;
- 10 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
11 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
12 and other non-party Aggrieved Employees with meal periods, as set
13 forth below;
- 14 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
15 applicable IWC Wage Order for Defendants' failure to authorize and
16 permit Plaintiff and other non-party Aggrieved Employees to take rest
17 periods, as set forth below;
- 18 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
19 IWC Wage Order for failure to provide accurate and complete wage
20 statements to Plaintiff and other non-party Aggrieved Employees, as set
21 forth below;
- 22 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
23 IWC Wage Order for failure to maintain payroll records, as set forth
24 below;
- 25 (g) Violation of Labor Code section 204 for failure to pay all earned wages
26 during employment, as set forth below;
- 27 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
28 earned wages upon termination, as set forth below;

- 1 (i) Violation of Labor Code section 222.5 for failure to compensate
2 Plaintiff and other non-party Aggrieved Employees for mandatory
3 physical examinations and/or drug testing, as set forth below;
4 (j) Violation of Labor Code section 2802 for failure to reimburse other
5 non-party Aggrieved Employees for all business expenses necessarily
6 incurred, as set forth below; and
7 (k) Violation of Labor Code sections 6401 and 6403 for failure to provide
8 safety devices and safeguards, such as personal protective equipment, to
9 Plaintiff and other non-party Aggrieved Employees, as set forth below.

10 **FAILURE TO PAY OVERTIME**

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

12 48. Labor Code section 1198 makes it illegal to employ an employee under
13 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
14 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
15 shall be the . . . standard conditions of labor for employees. The employment of any employee
16 . . . under conditions of labor prohibited by the order is unlawful.”

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

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

26 51. The applicable IWC Wage Order further provides that Defendants are and were
27 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
28 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.

1 An employee's regular rate of pay includes all remuneration for employment paid to, or on
2 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

9 53. During the relevant time period, Defendants willfully failed to pay all overtime
10 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
11 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
12 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
13 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
14 not recorded.

15 54. First, during the relevant time period, Defendants had, and continue to have, a
16 company-wide policy and/or practice of failing to accurately record hours worked by their
17 employees. Due to Defendants' practice and/or policy of scheduling shifts outside of daytime
18 business hours, Plaintiff and other non-party Aggrieved Employees were required to enter the
19 clients' facilities only during specific time periods when the facility doors would be
20 temporarily opened. For example, after reporting to work on time, Plaintiff and other non-
21 party Aggrieved Employees were forced to wait at least five (5) minutes and up to sixty (60)
22 minutes to enter the clients' facilities and clock in because there was no one available to open
23 the doors for them. As a result, Plaintiff and other non-party Aggrieved Employees were
24 forced to work off-the-clock, but were not provided a means by Defendants to account for this
25 time. Thus, Defendants failed to track this time spent working off-the-clock before their
26 scheduled shifts, and Plaintiff and other non-party Aggrieved Employees received no
27 compensation for this time they remained under Defendants' control.

28 55. Second, during the relevant period, Defendants implemented, on a company-

1 wide basis, an employer-imposed requirement that Plaintiff and other non-party Aggrieved
2 Employees undergo mandatory COVID-19 health screenings and temperature checks before
3 clocking in for their scheduled shifts. Prior to each shift, Plaintiff was required to spend up to
4 ten (10) minutes per instance waiting and then undergoing the temperature check and health
5 screening at the entrance of the clients' facilities, before being permitted to clock in for her
6 shift. Even though Defendants required these health screenings, Defendants did not provide
7 Plaintiff and other non-party Aggrieved Employees a mechanism to record this time worked
8 so they could be compensated for the time spent undergoing mandatory health screenings and
9 temperature checks.

10 56. Third, during the relevant time period, Defendants had, and continue to have, a
11 company-wide policy and/or practice of understaffing their jobsites by adopting a single-
12 staffing model for certain shifts, which resulted in a lack of meal period coverage for
13 employees. As a result of Defendants' policy of understaffing and/or single-staffing while
14 assigning heavy workloads, coupled with a company-wide policy and/or practice of failing to
15 adhere to a schedule of meal periods (*see infra*), Plaintiff and other non-party Aggrieved
16 Employees were not always afforded uninterrupted 30-minute meal periods during shifts when
17 they were entitled to receive a meal period. For example, Plaintiff and other non-party
18 Aggrieved Employees were required to work through and/or return early from meal periods.
19 Consequently, Plaintiff and other non-party Aggrieved Employees performed work during
20 meal periods for which they were not paid.

21 57. Fourth, on information and belief, Defendants implemented a company-wide
22 practice and/or policy of automatically deducting meal periods from Plaintiff's and other non-
23 party Aggrieved Employees' time records. As a result of this policy, Defendants deducted 30-
24 minute meal periods from Plaintiff's and other non-party Aggrieved Employees' time records,
25 even when meal periods were missed, shortened, and/or interrupted. Thus, Defendants did not
26 record all hours worked during meal periods, and Plaintiff and other non-party Aggrieved
27 Employees performed work during meal periods for which they were not paid.

28 58. Defendants knew or should have known that as a result of these company-wide

1 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
2 their assigned duties off-the-clock before and after their shifts and during meal periods, and
3 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
4 and other non-party Aggrieved Employees sometimes worked shifts of eight (8) hours a day or
5 more or forty (40) hours a week or more, some of this off-the-clock work qualified for
6 overtime premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were
7 not paid overtime wages for all of the overtime hours they actually worked.

8 59. Furthermore, on information and belief, Defendants did not pay other non-party
9 Aggrieved Employees the correct overtime rate for the recorded overtime hours that they
10 generated. In addition to an hourly wage, Defendants paid other non-party Aggrieved
11 Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
12 However, in violation of the California Labor Code, Defendants failed to incorporate all
13 compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of
14 remuneration, into the calculation of the regular rate of pay for purposes of calculating the
15 overtime wage rate. Therefore, during times when other non-party Aggrieved Employees
16 worked overtime and received these other forms of pay, Defendants failed to pay all overtime
17 wages by paying a lower overtime rate than required.

18 60. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
19 the balance of overtime compensation as required by California law, violates the provisions of
20 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
21 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
22 558 and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY MINIMUM WAGES**

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

25 61. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
26 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
27 to be paid to employees, and the payment of a wage less than the minimum so fixed is
28 unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time

1 during which an employee is subject to the control of an employer, and includes all the time
2 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
3 Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

4 62. As stated, due to Defendants’ company-wide policies and/or practices of not
5 permitting employees to record all their hours worked, Defendants failed to record all hours
6 worked by Plaintiff and other non-party Aggrieved Employees that were outside of their
7 scheduled shifts, such as waiting for entry into the building and/or submitting to off-the-clock
8 health screenings. In addition, as stated above, due to Defendants’ policy and/or practice of
9 understaffing and/or single-staffing while assigning heavy workloads, and the resultant lack of
10 coverage and failure to adhere to a schedule of meal periods, Plaintiff and other non-party
11 Aggrieved Employees were forced to forego meal periods, have their meal periods interrupted,
12 and/or were otherwise not relieved of all duties during meal periods. Moreover, as stated,
13 Defendants had a company-wide practice and/or policy of automatically deducting meal
14 periods from employee time records, even when meal periods were missed, short, and/or
15 interrupted. Thus, Defendants systematically failed to pay Plaintiff and other non-party
16 Aggrieved Employees for actual hours worked during unpaid meal periods, because these
17 hours were not always correctly recorded.

18 63. Moreover, Defendants maintained and implemented a company-wide policy of
19 requiring employees to travel to a medical facility on their own time and using their own
20 personal vehicles to undergo mandatory drug testing and/or physical examinations. At all
21 times, Defendants were in control of scheduling the time period for the testing and/or physical
22 examinations, selecting the provider or facility where the testing and/or physical examinations
23 were to take place, and determining the scope of the testing and/or physical examinations.
24 Defendants gave other non-party Aggrieved Employees strict instructions to obtain drug
25 testing and/or physical examinations, and other non-party Aggrieved Employees underwent
26 the testing and/or examinations for the sole benefit of Defendants. Other non-party Aggrieved
27 Employees were required to travel in their own personal vehicles or obtain alternate
28 transportation and spend time undergoing Defendants’ mandatory drug tests and/or physical

1 examinations. However, Defendants did not compensate other non-party Aggrieved
2 Employees for the time they spent traveling to and from the medical facilities and for the time
3 they spent undergoing the mandatory drug testing and/or physical examinations.

4 64. Thus, Defendants did not pay at least minimum wages for all hours worked by
5 Plaintiff and other non-party Aggrieved Employees. Also, to the extent that these off-the-
6 clock hours did not qualify for overtime premium payment, Defendants did not pay at least
7 minimum wages for those hours worked off-the-clock in violation of California Labor Code
8 sections 1182.12, 1194, 1197, and 11978.

9 65. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
10 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
11 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
12 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

13 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
14 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

18 67. At all relevant times herein set forth, California Labor Code section 512(a)
19 provides that an employer may not require, cause, or permit an employee to work for a period
20 of more than five (5) hours per day without providing the employee with a meal period of not
21 less than thirty (30) minutes, except that if the total work period per day of the employee is
22 not more than six (6) hours, the meal period may be waived by mutual consent of both the
23 employer and the employee. Under California law, first meal periods must start after no more
24 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

25 68. At all relevant times herein set forth, California Labor Code sections 226.7,
26 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
27 meal period mandated by an applicable order of the IWC.

28 69. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and

1 1198, and the applicable IWC Wage Order also require employers to provide a second meal
2 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
3 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
4 the total hours worked is no more than twelve (12) hours, the second meal period may be
5 waived by mutual consent of the employer and the employee only if the first meal period was
6 not waived.

7 70. As stated, Defendants systematically, and on a company-wide basis,
8 understaffed their sites by adopting a single-staffing model for certain shifts, thereby failing to
9 provide adequate meal period coverage to permit employees to take compliant meal periods.
10 Because Defendants understaffed or single-staffed their jobsites, there was no one available to
11 relieve Plaintiff and other non-party Aggrieved Employees needing meal period coverage
12 during certain shifts. Defendants' policies and/or practices, including understaffing and/or
13 single-staffing for certain shifts, assigning heavy workloads, and the resultant lack of
14 coverage, prevented Plaintiff and other non-party Aggrieved Employees from taking timely,
15 uninterrupted 30-minute meal periods to which they were entitled. Due to the lack of
16 coverage, Defendants also failed to adhere to a schedule of meal periods, which further caused
17 Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for
18 compliant meal periods. Defendants' practices and policies prevented Plaintiff and other non-
19 party Aggrieved Employees from taking all compliant meal periods to which they were
20 entitled.

21 71. As a result, Plaintiff and other non-party Aggrieved Employees were forced to
22 work in excess of five (5) hours before taking a meal period and/or, at times, had their meal
23 periods cut short and/or had to forgo their meal periods altogether. For example, two (2)
24 times per week, Plaintiff was required to take her meal periods late (after having worked in
25 excess of five (5) hours or more into her shift) due to the lack of coverage when she worked
26 alone. In addition, Plaintiff's meal periods were interrupted or cut short twice per week in
27 order to attend to issues or handle other requests from Defendants' client.

28 72. Further, as stated, on information and belief, Defendants implemented a

1 company-wide policy and practice of automatically deducting meal periods from Plaintiff's
2 and other non-party Aggrieved Employees' time records. As a result of this policy,
3 Defendants deducted 30 minutes from Plaintiff's and other non-party Aggrieved Employees'
4 time records, even when meal periods were missed, short, and/or interrupted. Thus,
5 Defendants systematically failed to correctly record meal periods.

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

11 74. Moreover, Defendants had a company-wide policy of requiring all newly hired
12 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
13 the position that non-exempt, hourly paid employees had waived their rights to first and
14 second meal periods for the entirety of their employment and, on that basis, did not provide
15 them with all meal periods to which they were entitled. Specifically, Defendants' "Meal
16 Period Waiver Election" form provides that the waiver remains in effect until the employee
17 provides Defendants with written notice of his or her decision to revoke. Defendants'
18 company-wide use of blanket meal period waivers signed at or near the time of hire and
19 imposition on employees to revoke the waivers in writing, discouraged and impeded Plaintiff
20 and other non-party Aggrieved Employees from taking all meal periods to which they were
21 entitled. And, Defendants' presumption that second meal periods would not be provided for
22 shifts in excess of ten (10) hours but less than twelve (12) hours due to the blanket meal
23 period waivers discouraged other non-party Aggrieved Employees from taking second meal
24 periods.

25 75. At all times herein mentioned, Defendants knew or should have known that, as
26 a result of these policies, Plaintiff and other non-party Aggrieved Employees were not actually
27 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
28 should have known that it did not pay Plaintiff and other non-party Aggrieved Employees

1 meal period premiums when meal periods were late, interrupted, shortened, or missed.

2 76. Moreover, Defendants engaged in a company-wide practice and/or policy of
3 not paying all meal period premiums owed when compliant meal periods are not provided.
4 Because of Defendants' practices and/or policies, Plaintiff and other non-party Aggrieved
5 Employees have not received premium pay for all missed, late, and interrupted meal periods.
6 Alternatively, to the extent that Defendants did pay other non-party Aggrieved Employees
7 premium pay for missed, late, and interrupted meal periods, Defendants did not pay other non-
8 party Aggrieved Employees at the correct rate of pay for premiums because Defendants
9 systematically failed to include all forms of compensation, such as incentive pay,
10 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

11 77. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
12 Employees compliant meal periods and failed to pay the full meal period premiums due.
13 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
14 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
15 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
16 2699(a), (f), and (g).

17 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

18 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

19 78. At all relevant times herein set forth, the applicable IWC Wage Order and
20 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
21 non-party Aggrieved Employees' employment by Defendants.

22 79. At all relevant times, the applicable IWC Wage Order provides that "[e]very
23 employer shall authorize and permit all employees to take rest periods, which insofar as
24 practicable shall be in the middle of each work period" and that the "rest period time shall be
25 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
26 hours or major fraction thereof" unless the total daily work time is less than three and one-half
27 (3 ½) hours.

28 80. At all relevant times, California Labor Code section 226.7 provides that no

1 employer shall require an employee to work during any rest period mandated by an applicable
2 order of the California IWC. To comply with its obligation to authorize and permit rest
3 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
4 employer must “relinquish any control over how employees spend their break time, and
5 relieve their employees of all duties—including the obligation that an employee remain on
6 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
7 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

8 81. Pursuant to the applicable IWC Wage Order and California Labor Code section
9 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
10 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
11 required rest period was not authorized and permitted.

12 82. During the relevant time period, Defendants regularly failed to authorize and
13 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
14 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
15 Defendants’ company-wide practices, including understaffing and/or single-staffing, and
16 assigning heavy workloads, prevented Plaintiff and other non-party Aggrieved Employees
17 from being relieved of all duty to take rest periods. Additionally, Defendants failed to
18 schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period
19 coverage, further led to Plaintiff and other non-party Aggrieved Employees not being
20 authorized and permitted to take compliant rest periods.

21 83. Additionally, on information and belief, during the relevant time period,
22 Defendants maintained and implemented a company-wide on-premises rest period policy,
23 which mandated that Plaintiff and/or other non-party Aggrieved Employees remain on the
24 work premises during their rest periods. Because Plaintiff and/or other non-party Aggrieved
25 Employees were restricted from leaving the premises during rest periods, they were denied the
26 ability to use their rest periods freely for their own purposes, such as running personal errands.
27 Thus, Defendants effectively maintained control over Plaintiff and/or other non-party
28 Aggrieved Employees during rest periods.

1 84. As a result of Defendants' practices and policies, Plaintiff and other non-party
2 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess
3 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
4 entitled. For example, Plaintiff missed her rest periods at least twice per week because of the
5 heavy workload and lack of rest period coverage.

6 85. Defendants also have engaged in a company-wide practice and/or policy of not
7 paying all rest period premiums owed when compliant rest periods are not authorized and
8 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
9 Employees have not received premium pay for all missed rest periods. Alternatively, to the
10 extent that Defendants did pay other non-party aggrieved Employees one (1) additional hour
11 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
12 Employees at the correct rate of pay for premiums because Defendants failed to include all
13 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
14 of remuneration, in the regular rate of pay.

15 86. Defendants' conduct violates the applicable IWC Wage Order and California
16 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
17 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
18 558 and/or 2699(a), (f), and (g).

19 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
20 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

26 88. During the relevant time period, Defendants have knowingly and intentionally
27 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
28 inaccurate wage statements. For example, Defendants issued uniform wage statements to

1 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
2 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
3 the pay period, including overtime rates of pay, and the corresponding number of hours
4 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
5 226(a)(5), and 226(a)(9).

6 89. Because Defendants did not record the time Plaintiff and other non-party
7 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
8 of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in
9 compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason,
10 Defendants failed to accurately list the total number of hours worked by Plaintiff and other
11 non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list the
12 applicable hourly rates of pay in effect during the pay period and the corresponding accurate
13 number of hours worked at each hourly rate, in violation of section 226(a)(9).

14 90. Also, because Defendants did not calculate other non-party Aggrieved
15 Employees' regular rate of pay correctly for purposes of paying overtime and/or meal and rest
16 premiums, Defendants did not list the correct amount of gross wages in compliance with
17 section 226(a)(1). For the same reason, Defendants also failed to list the correct amount of net
18 wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable
19 hourly rates in effect during the pay period, namely, correct overtime rates of pay, in violation
20 of section 226(a)(9).

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

1 92. California Labor Code section 1174(d) provides that “[e]very person employing
2 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
3 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
4 plants or establishments at which employees are employed, payroll records showing the hours
5 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
6 applicable piece rate paid to, employees employed at the respective plants or
7 establishments. . . .” Defendants willfully failed to maintain accurate payroll records for
8 Plaintiff and other non-party Aggrieved Employees showing the daily hours they worked and
9 the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

27 94. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
28 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover

1 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

2 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

3 **VIOLATION OF LABOR CODE SECTION 204**

4 95. At all relevant times herein set forth, California Labor Code section 204
5 requires that all wages earned by any person in any employment between the 1st and the 15th
6 days, inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the 16th and the 26th day of the month during which
8 the labor was performed. Labor Code section 204 further provides that all wages earned by
9 any person in any employment between the 16th and the last day, inclusive, of any calendar
10 month, other than those wages due upon termination of an employee, are due and payable
11 between the 1st and the 10th day of the following month.

12 96. At all relevant times herein, California Labor Code section 204 also requires
13 that all wages earned for labor in excess of the normal work period shall be paid no later than
14 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
15 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
16 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
17 more than seven (7) calendar days following the close of the payroll period.

18 97. During the relevant time period, Defendants failed to pay Plaintiff and other
19 non-party Aggrieved Employees all wages due to them, including, but not limited to, overtime
20 wages, minimum wages, and/or meal and rest period premiums within any time period
21 specified by California Labor Code section 204.

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

24 **FAILURE TO PAY WAGES UPON TERMINATION**

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

26 99. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
27 that if an employer discharges an employee, the wages earned and unpaid at the time of
28 discharge are due and payable immediately, and that if an employee voluntarily leaves his or

1 her employment, his or her wages shall become due and payable not later than seventy-two
2 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
3 his or her intention to quit, in which case the employee is entitled to his or her wages at the
4 time of quitting.

5 100. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
6 Employees who are no longer employed by Defendants all their earned wages, including, but
7 not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either
8 at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
9 employ.

10 101. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
11 who are no longer employed by Defendants their wages earned and unpaid at the time of
12 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
13 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
14 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
15 2699(a), (f), and (g).

16 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATIONS**

17 **VIOLATION OF LABOR CODE SECTION 222.5**

18 102. At all relevant times herein, California Labor Code section 222.5 requires
19 employers to pay for the costs an employee incurs for obtaining any required medical or
20 physical examination.

21 103. During the relevant time period, Defendants implemented, on a company-wide
22 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo
23 mandatory drug testing and/or physical examinations, but required them to do so at their own
24 expense. As stated, Defendants had a company-wide policy requiring that other non-party
25 Aggrieved Employees travel to a specified medical facility on their own time and use their
26 own means of transportation to undergo drug testing and/or physical examinations. At all
27 times, Defendants were in control of scheduling the date and time for the testing and/or
28 examinations, selecting the provider/facility where the testing and/or examinations were to

1 take place, and determining the scope of the testing and/or examinations.

2 104. However, Defendants did not compensate other non-party Aggrieved
3 Employees for the time they spent traveling to and from the medical facilities, for the time
4 they spent undergoing the drug testing and/or physical examinations, or reimburse them for
5 the travel expenses they incurred getting to and from the medical facilities. Defendants'
6 policy and/or practice of not paying for all costs other non-party Aggrieved employees
7 incurred obtaining mandatory drug testing and/or physical examinations is in violation of
8 California Labor Code section 222.5.

9 105. Other non-party Aggrieved Employees are therefore entitled to recover civil
10 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

11 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

12 **VIOLATION OF LABOR CODE SECTION 2802**

13 106. At all times herein set forth, California Labor Code section 2802 provides that
14 an employer must reimburse employees for all necessary expenditures and losses incurred by
15 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
16 to prevent employers from passing off their cost of doing business and operating expenses on
17 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
18 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen
19 tools or equipment are required by the employer or are necessary to the performance of a job,
20 such tools and equipment shall be provided and maintained by the employer, except that an
21 employee whose wages are at least two (2) times the minimum wage may provide and
22 maintain hand tools and equipment customarily required by the particular trade or craft."

23 107. First, as stated, Defendants had a company-wide policy of requiring other non-
24 party Aggrieved Employees to travel to medical facilities on their own time and using their
25 personal vehicles or alternate transportation to obtain mandatory drug testing and/or physical
26 examinations, but did not reimburse them for their travel expenses, including mileage. At all
27 times, Defendants were in control of scheduling the date and time for the testing and/or
28 physical examinations, selecting the provider or facility where the testing and/or physical

1 examinations were to take place, and determining the scope of the testing and/or physical
2 examinations. Although Defendants required other non-party Aggrieved Employees to use
3 their own vehicles or obtain alternate transportation to undergo drug testing and/or physical
4 examinations, Defendants never reimbursed them for their travel expenses.

5 108. Second, Defendants, on a company-wide basis, required Plaintiff and other
6 non-party Aggrieved Employees to report to work wearing clean and presentable uniforms,
7 including uniform shirts and vests bearing the company logo on a daily basis, but failed to
8 provide Plaintiff and other non-party Aggrieved Employees with an adequate number of
9 uniforms in relation to their scheduled shifts and for the tasks they were required to perform.
10 This forced Plaintiff and other non-party Aggrieved Employees to clean their uniforms
11 frequently and incur expenses for doing so. For example, Plaintiff was provided only one (1)
12 safety vest and two (2) uniform shirts when scheduled to work five (5) or more days per week.
13 In addition, due to the nature of their work, Plaintiff's and other non-party Aggrieved
14 Employees' uniforms would become dirty with cleaning products, grime, and bodily fluids,
15 such that they were unable to mix these clothes in with their other laundry. As a result,
16 Plaintiff and other non-party Aggrieved Employees were forced to wash their uniform items
17 more frequently and separately from any other items, thus incurring additional utility and
18 laundry expenses.

19 109. Third, Defendants, on a company-wide basis, mandated that Plaintiff and other
20 non-party Aggrieved Employees purchase special safety shoes such as steel-toed boots, which
21 they were required to wear while at work. Plaintiff purchased steel-toed boots twice, at a cost
22 of approximately \$120.00 per pair, to wear during the performance of her duties, but was not
23 reimbursed for all of these costs.

24 110. Defendants could have provided Plaintiff and other non-party Aggrieved
25 Employees with the actual tools for use on the job, such as company vehicles and steel-toed
26 boots, to be used for fulfilling work-related tasks, and an adequate number of uniforms and/or
27 access to laundering services. Or, Defendants could have fully reimbursed employees for the
28 costs of their mileage, travel, laundering expenses, and boot expenses. Instead, Defendants

1 passed these operating costs off onto Plaintiff and other non-party Aggrieved Employees. At
2 all relevant times, Plaintiff and other non-party Aggrieved Employees did not earn at least two
3 (2) times the minimum wage.

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

8 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

9 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

10 112. At all times herein set forth, California Labor Code section 6401 provides that
11 employers must furnish and use safety devices and safeguards, and adopt and use practices,
12 means, methods, operations, and processes which are reasonably adequate to render the
13 employment and place of employment safe and healthy. California Labor Code Section 6401
14 further provides that an employer must do everything reasonably necessary to protect the life,
15 safety and health of its employees. California Labor Code section 6403(a) requires that
16 employers provide and use safety devices and safeguards reasonably adequate to render the
17 employment and place of employment safe.

18 113. Defendants, on a company-wide basis, failed to provide Plaintiff and other non-
19 party Aggrieved Employees with personal protective equipment, such as steel-toed boots, to
20 keep them safe in the workplace. Despite the fact that Defendants required employees to wear
21 certain personal protective equipment, including steel-toed boots, Defendants failed to provide
22 such reasonably necessary equipment to Plaintiff and other non-party Aggrieved Employees to
23 keep them safe.

24 114. Defendants' failure to provide Plaintiff and other non-party Aggrieved
25 Employees with safety devices and safeguards for the workplace violates California Labor
26 Code sections 6401 and 6403. Plaintiff and other non-party Aggrieved Employees are
27 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
28 (g).

1 **REQUEST FOR JURY TRIAL**

2 Plaintiff requests a trial by jury.

3 **PRAYER FOR RELIEF**

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

6 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
7 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
8 amount.

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

10 2. That the Court declare, adjudge and decree that Defendants violated the
11 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
12 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
13 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
14 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
15 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
16 statements and maintain accurate payroll records); 201, 202, and 203 (by failing to timely pay
17 all earned wages upon termination); 204 (by failing to timely pay all earned wages during
18 employment); 222.5 (by failing to pay the costs of mandatory physical examinations and/or
19 drug testing); 2802 (by failing to reimburse business expenses); and 6401 and 6403 (by failing
20 to provide safety devices and safeguards).

21 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
22 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
23 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802,
24 6401, and 6403;

25 4. For attorneys' fees and costs pursuant to California Labor Code section
26 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
27 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
28 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403;

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- 5. For pre-judgment and post-judgment interest as provided by law; and
- 6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: July 19, 2021

Respectfully submitted,
Capstone Law APC

By: 
Mark A. Ozzello
Brandon K. Brouillette
Joseph Hakakian

Attorneys for Plaintiff Maria Hernandez

EXHIBIT A

MICHELLE KENNEDY
310.712.8146 Direct
Michelle.Kennedy@capstonelawyers.com

May 13, 2021

VIA ONLINE SUBMISSION

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

Subject: *Maria Hernandez v. Excel Building Services LLC*

Dear PAGA Administrator:

This office represents Maria Hernandez in connection with her claims under the California Labor Code. Ms. Hernandez was an employee of EXCEL BUILDING SERVICES LLC (“EXCEL”).

The employer may be contacted directly at the address below:

EXCEL BUILDING SERVICES LLC
1061 SERPENTINE LN STE H
PLEASANTON CA 94566

Ms. Hernandez 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. Hernandez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by EXCEL 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.

EXCEL employed Ms. Hernandez as an hourly paid, non-exempt employee from approximately March 2018 to September 2020. Ms. Hernandez worked as a Janitor for EXCEL at its client IKEA’s warehouse location in American Canyon, California. During her employment, Ms. Hernandez typically worked eight (8) hours or more per day, and five (5) or more days per week. At the time her employment ended, Ms. Hernandez was compensated approximately \$15.00 per hour. Her job duties included, without limitation, cleaning the bathrooms, offices, and warehouse.

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

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

EXCEL BUILDING SERVICES LLC is a California limited liability company which provides cleaning services for commercial, industrial, professional, and retail facilities throughout the United States. Upon information and belief, EXCEL maintains a single, centralized Human Resources (HR) department at its company headquarters in Pleasanton, California, for all non-exempt, hourly paid employees working for EXCEL in California, including Ms. Hernandez and other aggrieved employees. At all relevant times, EXCEL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Hernandez and other aggrieved employees, regardless of their location or position.

Upon information and belief, EXCEL maintains a centralized Payroll department at its company headquarters in Pleasanton, California, which processes payroll for all non-exempt, hourly paid employees working for EXCEL in California, including Ms. Hernandez and other aggrieved employees. Further, EXCEL issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Hernandez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, EXCEL utilized the same methods and formulas when calculating wages due to Ms. Hernandez 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 (1 ½) 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.

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

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

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.

First, during the relevant time period, EXCEL had, and continues to have, a company-wide policy and/or practice of failing to accurately record hours worked by its employees. Due to EXCEL's practice and/or policy of scheduling shifts outside of daytime business hours, Ms. Hernandez and other aggrieved employees were required to enter the clients' facilities only during specific time periods when the facility doors would be temporarily opened. For example, after reporting to work on time, Ms. Hernandez and other aggrieved employees were forced to wait at least five (5) minutes and up to sixty (60) minutes to enter the clients' facilities and clock in because there was no one available to open the doors for them. As a result, Ms. Hernandez and other aggrieved employees were forced to work off-the-clock, but were not provided a means by EXCEL to account for this time. Thus, EXCEL failed to track this time spent working off-the-clock before their scheduled shifts, and Ms. Hernandez and other aggrieved employees received no compensation for this time they remained under EXCEL's control.

Second, during the relevant period, EXCEL implemented, on a company-wide basis, an employer-imposed requirement that Ms. Hernandez and other aggrieved employees undergo mandatory COVID-19 health screenings and temperature checks before clocking in for their scheduled shifts. Prior to each shift, Ms. Hernandez was required to spend up to ten (10) minutes per instance waiting and then undergoing the temperature check and health screening at the entrance of the clients' facilities, before being permitted to clock in for her shift. Even though EXCEL required these health screenings, EXCEL did not provide Ms. Hernandez and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory health screenings and temperature checks.

Third, during the relevant time period, EXCEL had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites by adopting a single-staffing model for certain shifts, which resulted in a lack of meal period coverage for employees. As a result of EXCEL's policy of understaffing and/or single-staffing while assigning heavy workloads, coupled with a company-wide policy and/or practice of failing to adhere to a schedule of meal periods (*see infra*), Ms. Hernandez 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, Ms. Hernandez and other aggrieved employees were required to work through and/or return early from meal periods. Consequently, Ms. Hernandez and other aggrieved employees performed work during meal periods for which they were not paid.

Fourth, on information and belief, EXCEL implemented a company-wide practice and/or policy of automatically deducting meal periods from Ms. Hernandez's and other aggrieved employees' time records. As a result of this policy, EXCEL deducted 30-minute meal periods from Ms. Hernandez's and other aggrieved employees' time records, even when meal periods were missed, short, and/or interrupted. Thus, EXCEL did not record all hours worked during meal periods, and Ms. Hernandez and other aggrieved employees performed work during meal periods for which they were not paid.

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

Furthermore, on information and belief, EXCEL did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, EXCEL paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, EXCEL failed to incorporate all compensation, including 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 other aggrieved employees worked overtime and received these other forms of pay, EXCEL failed to pay all overtime wages by paying a lower overtime rate than required.

Accordingly, Ms. Hernandez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked, in violation of California Labor Code sections 510 and 1198. Ms. Hernandez 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 Wage Order No. 5-2001 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, § 11050(2)(K) (defining "Hours Worked").

As stated, due to EXCEL's company-wide policies and/or practices of not permitting employees to record all their hours worked, EXCEL failed to record all hours worked by Ms. Hernandez and other aggrieved employees that were outside of their scheduled shifts, such as waiting for entry into the building and/or submitting to off-the-clock health screenings. In addition, as stated above, due to EXCEL's policy and/or practice of understaffing and/or single-staffing while assigning heavy workloads, and the resultant lack of coverage and failure to adhere to a schedule of meal periods, Ms. Hernandez and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, as stated, EXCEL had a company-wide practice and/or policy of automatically deducting meal periods from employee time records, even when meal periods were missed, short, and/or interrupted. Thus, EXCEL systematically failed to pay Ms. Hernandez and other aggrieved employees for actual hours worked during unpaid meal periods, because these hours were not always correctly recorded.

Moreover, EXCEL maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, EXCEL was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. EXCEL gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees

underwent the testing and/or examinations for the sole benefit of EXCEL. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing EXCEL's mandatory drug tests and/or physical examinations. However, EXCEL did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the mandatory drug testing and/or physical examinations.

Thus, EXCEL did not pay at least minimum wages for all hours worked by Ms. Hernandez and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, EXCEL 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, EXCEL regularly failed to pay at least minimum wages to Ms. Hernandez 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. Hernandez and other aggrieved employees are 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 (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.

As stated, EXCEL systematically, and on a company-wide basis, understaffed its sites by adopting a single-staffing model for certain shifts, thereby failing to provide adequate meal period coverage to permit employees to take compliant meal periods. Because EXCEL understaffed or single-staffed its jobsites, there was no one available to relieve Ms. Hernandez and other aggrieved employees needing meal period coverage during certain shifts. EXCEL's policies and/or practices, including understaffing and/or single-staffing for certain shifts, assigning heavy workloads, and the resultant lack of coverage, prevented Ms. Hernandez and other aggrieved employees from taking timely, uninterrupted 30-minute meal periods to which they were entitled. Due to the lack of coverage, EXCEL also failed to adhere to a schedule of meal periods, which further caused Ms. Hernandez and other aggrieved employees to not be relieved of their duties for compliant meal periods. EXCEL's practices and policies prevented Ms. Hernandez and other aggrieved employees from taking all compliant meal periods to which they were entitled.

As a result, Ms. Hernandez and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and/or, at times, had their meal periods cut short and/or had to forgo their meal periods altogether. For example, two (2) times per week, Ms. Hernandez was required to take her meal periods late (after having worked in excess of five (5) hours or more into her shift) due to the lack of coverage when she worked alone. In addition, Ms. Hernandez's meal periods were interrupted or cut short twice per week in order to attend to issues or handle other requests from EXCEL's client.

Further, as stated, on information and belief, EXCEL implemented a company-wide policy and practice of automatically deducting meal periods from Ms. Hernandez's and other aggrieved employees' time records. As a result of this policy, EXCEL deducted 30 minutes from Ms. Hernandez's and other aggrieved employees' time records, even when meal periods were missed, short, and/or interrupted. Thus, EXCEL systematically failed to correctly record meal periods.

Additionally, EXCEL did not provide other aggrieved employees with all second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Hernandez 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.

Moreover, EXCEL had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. EXCEL took the position that non-exempt, hourly paid employees had waived their rights to first and second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Specifically, EXCEL's "Meal Period Waiver Election" form provides that the waiver remains in effect until the employee provides EXCEL with written notice of his or her decision to revoke. EXCEL's company-wide use of blanket meal period waivers signed at or near the time of hire and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Hernandez and other aggrieved employees from taking all meal periods to which they were entitled. And, EXCEL's presumption that second meal periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12) hours due to the blanket meal period waivers discouraged other aggrieved employees from taking second meal periods.

At all times herein mentioned, EXCEL knew or should have known that, as a result of these policies, Ms. Hernandez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. EXCEL further knew or should have known that it did not pay Ms. Hernandez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

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

Accordingly, EXCEL failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Hernandez 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 (3 ½) 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, EXCEL regularly failed to authorize and permit Ms. Hernandez 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, EXCEL's company-wide practices, including understaffing and/or single-staffing, and assigning heavy workloads, prevented Ms. Hernandez and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, EXCEL failed to schedule rest periods, which, coupled with EXCEL's failure to provide adequate rest period coverage, further led to Ms. Hernandez and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, on information and belief, during the relevant time period, EXCEL maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Hernandez and/or other aggrieved employees remain on the work premises during their rest periods. Because Ms. Hernandez 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, EXCEL effectively maintained control over Ms. Hernandez and/or other aggrieved employees during rest periods.

As a result of EXCEL's practices and policies, Ms. Hernandez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Hernandez missed her rest periods at least twice per week because of the heavy workload and lack of rest period coverage.

EXCEL also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Hernandez and other aggrieved employees have not received premium

pay for all missed rest periods. Alternatively, to the extent that EXCEL did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, EXCEL did not pay other aggrieved employees at the correct rate of pay for premiums because EXCEL failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, EXCEL failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Hernandez 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. EXCEL has not provided Ms. Hernandez 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 wage 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, EXCEL has knowingly and intentionally provided Ms. Hernandez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, EXCEL issued uniform wage statements to Ms. Hernandez 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, EXCEL violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because EXCEL did not record the time Ms. Hernandez and other aggrieved employees spent working off-the-clock, EXCEL did not list the correct amount of gross wages and net wages earned by Ms. Hernandez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, EXCEL failed to accurately list the total number of hours worked by Ms. Hernandez 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).

Also, because EXCEL did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, EXCEL did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, EXCEL also failed to list the correct amount of net wages in violation of section 226(a)(5). EXCEL also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay, 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), EXCEL willfully failed to maintain accurate payroll records for Ms. Hernandez 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.

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, EXCEL failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Hernandez and other aggrieved employees, in violation of section 1198. Furthermore, in light of EXCEL’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, EXCEL kept no records of meal start and end times for second meal periods.

Because EXCEL failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Hernandez 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. Hernandez 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. Hernandez 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, EXCEL failed to pay Ms. Hernandez 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. Hernandez 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.

EXCEL willfully failed to pay Ms. Hernandez and other aggrieved employees who are no longer employed by EXCEL all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving EXCEL's employ.

Ms. Hernandez 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 § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, EXCEL implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, EXCEL had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, EXCEL was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, EXCEL did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. EXCEL's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

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 § 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 5-2001, 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, as stated, EXCEL had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, EXCEL was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. Although EXCEL required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, EXCEL never reimbursed them for their travel expenses.

Second, EXCEL, on a company-wide basis, required Ms. Hernandez and other aggrieved employees to report to work wearing clean and presentable uniforms, including uniform shirts and vests bearing the company logo on a daily basis, but failed to provide Ms. Hernandez and other aggrieved employees with an adequate number of uniforms in relation to their scheduled shifts and for the tasks they were required to perform. This forced Ms. Hernandez and other aggrieved employees to clean their uniforms frequently and incur expenses for doing so. For example, Ms. Hernandez was provided only one (1) safety vest and two (2) uniform shirts when scheduled to work five (5) or more days per week. In addition, due to the nature of their work, Ms. Hernandez's and other aggrieved employees' uniforms would become dirty with cleaning products, grime, and bodily fluids, such that they were unable to mix these clothes in with their other laundry. As a result, Ms. Hernandez and other aggrieved employees were forced to wash their uniform items more frequently and separately from any other items, thus incurring additional utility and laundry expenses.

Third, EXCEL, on a company-wide basis, mandated that Ms. Hernandez and other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Ms. Hernandez purchased steel-toed boots twice, at a cost of approximately \$120.00 per pair, to wear during the performance of her duties, but was not reimbursed for all of these costs.

EXCEL could have provided Ms. Hernandez and other aggrieved employees with the actual tools for use on the job, such as company vehicles and steel-toed boots, to be used for fulfilling work-related tasks, and an adequate number of uniforms and/or access to laundering services. Or, EXCEL could have fully reimbursed employees for the costs of their mileage, travel, laundering expenses, and boot expenses. Instead, EXCEL passed these operating costs off onto Ms. Hernandez and other aggrieved employees. At all relevant times, Ms. Hernandez did not earn at least two (2) times the minimum wage.

Thus, EXCEL 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. Ms. Hernandez and 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 §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

EXCEL, on a company-wide basis, failed to provide Ms. Hernandez and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that EXCEL required employees to wear certain personal protective equipment, including steel-toed boots, EXCEL failed to provide such reasonably necessary equipment to Ms. Hernandez and other aggrieved employees to keep them safe.

EXCEL's failure to provide Ms. Hernandez and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Ms. Hernandez and other aggrieved employees are entitled to recover 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." EXCEL, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Hernandez's and other aggrieved employees' rights by violating various sections of the

California Labor Code.

Accordingly, Ms. Hernandez 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. Hernandez, 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 EXCEL for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Ms. Hernandez 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. Hernandez's reasonable attempt to settle her dispute with EXCEL prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform EXCEL of Ms. Hernandez's aforementioned grievances and the proposed remedies as detailed below, while affording EXCEL a reasonable opportunity to satisfy Ms. Hernandez's demands.

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

1. EXCEL shall pay Ms. Hernandez and all other aggrieved employees employed by EXCEL at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. EXCEL 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, and provided lawful meal and rest periods.
3. EXCEL shall conduct a survey or interview all current and former aggrieved employees in California who worked for EXCEL 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 mandatory medical examinations, travel, mileage, laundering expenses, boot expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. EXCEL 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. EXCEL 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. EXCEL shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for EXCEL's benefit, including, but not limited to, costs of

mandatory medical examinations, travel expenses, mileage, laundering expenses, boot expenses, or other expenditures, as required by Labor Code sections 222.5 and 2802.

6. EXCEL shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. EXCEL shall provide Ms. Hernandez and all aggrieved employees employed by EXCEL 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. EXCEL shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
9. EXCEL 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.
10. EXCEL 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, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, 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 flourish at the end.

Michelle Kennedy

Copy: EXCEL BUILDING SERVICES LLC (via U.S. Certified Mail)