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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

ROMULO ADRIANO, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

VISBY MEDICAL, INC., a Delaware
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: **21CV387068**

**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 Romulo Adriano, as an aggrieved employee and on behalf of the State of
2 California and all other 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 July 23, 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.

4. Venue is proper in this Court, because filed a Statement of Information form with the California Secretary of State designating a principal place of business in San Jose, County of Santa Clara, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

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

THE PARTIES

6. Plaintiff Romulo Adriano is a resident of city of San Jose in Santa Clara County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately June 2020 to November 2020. Plaintiff worked for Defendants as an Operator at their facility in San Jose, California. Plaintiff typically worked eight (8) hours or more per day, and five (5) or more days per week. At the time his employment ended, Plaintiff was compensated approximately \$22.00 per hour. His job duties included, without limitation, assembling hardware for polymerase chain reaction (PCR) diagnostic kits, organizing and updating inventory counts for manufacturing, and conducting PCR testing for COVID-19.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' dispute resolution policy and/or arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented new hires with an 11-page document entitled "Visby Medical, Inc. At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement," during the onboarding process, which had to be reviewed and signed immediately. The Arbitration Agreement was one of several documents

1 presented to new employees for signature during the orientation process. Employees,
2 including Plaintiff and other non-party Aggrieved Employees, did not have a meaningful
3 opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to
4 Defendants' employees for them to sign on a take-it or leave-it basis at the time they were
5 hired, along with all of the other on-boarding documents. Further, Defendants did not set
6 forth in the agreement or otherwise provide employees with the rules which will govern the
7 arbitration, instead forcing employees to seek this information out on their own ("I agree that
8 any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc.
9 ('JAMS'), pursuant to its employment arbitration rules & procedures ('the JAMS Rules')."
10 Instead of including the rules of arbitration in the Arbitration Agreement itself, the agreement
11 required Plaintiff and other non-party Aggrieved Employees to visit a third-party website if
12 they wanted to access the governing rules.

13 8. VISBY MEDICAL, INC. was and is, upon information and belief, a Delaware
14 corporation, and at all times hereinafter mentioned, an employer whose employees are
15 engaged throughout this county and the State of California.

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

20 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
21 were the partners, agents, owners, or managers of VISBY MEDICAL, INC. at all relevant
22 times.

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

1 accordance with, and represent, the official policy of Defendants.

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

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

9 **PAGA REPRESENTATIVE ALLEGATIONS**

10 14. Defendants produce medical diagnostic devices, such as PCR testing for
11 specific viruses and diseases throughout the United States. Upon information and belief,
12 Defendants maintain a centralized Human Resources (“HR”) department at their corporate
13 headquarters in San Jose, California, which is responsible for the recruiting and hiring of new
14 employees, and communicating and implementing Defendants’ company-wide policies,
15 including timekeeping policies and meal and rest period policies, to employees throughout
16 California.

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

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

1 exempt, hourly paid employees in California, irrespective of their work locations. Upon
2 information and belief, Defendants process payroll for departing employees in the same
3 manner throughout the State of California, regardless of the manner in which each employee's
4 employment ends.

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

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

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

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

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

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

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

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

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

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

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

28 27. 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 timely payment of wages during their employment. In violation of the California Labor Code,
3 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
4 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
5 premiums, within permissible time periods.

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

12 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 receive their full wages due without having to execute a release of claims. In violation of the
15 California Labor Code, Defendants required Plaintiff and other non-party Aggrieved Employees
16 to release their claims for unpaid wages as a condition to receiving their paychecks.

17 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
19 and expenses other non-party Aggrieved Employees incurred obtaining mandatory physical
20 examinations and/or drug tests, but failed to do so.

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

26 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants knew or should have known that Defendants had a duty to provide
28 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms

1 of their employment with Defendants as required by the California Wage Theft Prevention
2 Act, but failed to do so.

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

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

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

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

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

- 24 (a) The aggrieved employee shall give written notice by online filing
25 (hereinafter "Employee's Notice") to the LWDA and by certified mail
26 to the employer of the specific provisions of the California Labor Code
27 alleged to have been violated, including the facts and theories to support
28 the alleged violations.

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

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

- 17 (a) The aggrieved employee or representative shall give written notice by
18 online filing to the LWDA and by certified mail to the employer of the
19 specific provisions of the California Labor Code alleged to have been
20 violated (other than those listed in Section 2699.5), including the facts
21 and theories to support the alleged violation.
- 22 (b) An aggrieved employee's notice filed with the LWDA pursuant to
23 2699.3(c) and any employer response to that notice shall be
24 accompanied by a filing fee of seventy-five dollars (\$75).
- 25 (c) The employer may cure the alleged violation within thirty-three (33)
26 calendar days of the postmark date of the notice. The employer shall
27 give written notice by certified mail within that period of time to the
28 aggrieved employee or representative and the agency if the alleged

1 violation is cured, including a description of actions taken, and no civil
2 action pursuant to Section 2699 may commence. If the alleged violation
3 is not cured within the 33-day period, the employee may commence a
4 civil action pursuant to Section 2699.

5 39. On July 23, 2021, Plaintiff provided written notice by online filing to the
6 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
7 Code alleged to have been violated, including facts and theories to support the alleged
8 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
9 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
10 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
11 Plaintiff PAGA Case Number LWDA-CM-839072-21. A true and correct copy of Plaintiff's
12 written notice to the LWDA and Defendants dated July 23, 2021 is attached hereto as "Exhibit
13 1."

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

17 41. Thus, Plaintiff has satisfied the administrative prerequisites under California
18 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
19 violations of California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7,
20 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

21 42. Labor Code section 558(a) provides "[a]ny employer or other person acting on
22 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
23 provision regulating hours and days of work in any order of the Industrial Welfare
24 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
25 dollars (\$50) for each underpaid employee for each pay period for which the employee was
26 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
27 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
28 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition

1 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
2 as a private attorney general, seeks assessment and collection of civil penalties under Labor
3 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
4 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
5 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
6 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
7 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
8 applicable IWC Wage Order.

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

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

16 45. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
17 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
18 private attorney general, seeks assessment and collection of civil penalties for himself, all
19 other non-party Aggrieved Employees, and the State of California against Defendants for
20 violations of California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7,
21 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198 2802, and 2810.5.

22 **FIRST CAUSE OF ACTION**

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

24 **(Against all Defendants)**

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

27 47. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
28 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code

1 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 206.5,
2 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section
3 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
4 violations of those Labor Code sections not found in section 2699.5, including sections 516,
5 1182.12, and 2810.5.

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

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

- (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;
- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as set forth below;
- (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (i) Violation of Labor Code section 206.5 for requiring Plaintiff and other non-party Aggrieved Employees to execute a release of claims as a condition to receiving wages due to them, as set forth below;
- (j) Violation of Labor Code section 222.5 for failure to compensate other non-party Aggrieved Employees for mandatory physical examinations and/or drug testing, as set forth below;
- (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other non-party Aggrieved Employees' employment with Defendants, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

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

50. California Labor Code section 1198 and the applicable IWC Wage Order

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

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

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

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

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

25 55. First, during the relevant time period, Defendants had, and continue to have, a
26 company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-
27 party Aggrieved Employees from recording hours worked that were outside of their scheduled
28 shifts, in order to limit the amount of overtime employees could accrue. On information and

1 belief, Defendants' policy and/or practice is to simply pay employees, including Plaintiff and
2 other non-party Aggrieved Employees, for the hours they are scheduled to work, and not the
3 actual hours worked, by pressuring Plaintiff and other non-party Aggrieved Employees to only
4 report the hours they are scheduled to work and thus work off-the-clock before and after their
5 scheduled shift times. For example, Plaintiff and other non-party Aggrieved Employees were
6 required to spend time donning and doffing required uniforms and personal protective
7 equipment (PPE). During the relevant time period, Plaintiff and other non-party Aggrieved
8 Employees were required to change into their uniforms and PPE at Defendants' facility;
9 however, Defendants did not allow Plaintiff and other non-party Aggrieved Employees to
10 report the time spent donning and doffing their uniforms and PPE as hours worked, despite
11 being on Defendants' premises and under Defendants' control. Specifically, Plaintiff and
12 other non-party Aggrieved Employees were instructed to arrive up to 15 minutes prior to the
13 start of their scheduled shifts for donning their uniforms and PPE. However, the "gowning"
14 areas could only accommodate up to four (4) employees at a time, for a group of
15 approximately 40 to 80 employees, resulting in significant time spent waiting off-the-clock
16 prior to each shift. In addition, Plaintiff and other non-party Aggrieved Employees were
17 similarly required to spend time doffing their uniforms and PPE at the end of each shift.
18 Defendants' donning and doffing policy also applied to Plaintiff and other non-party
19 Aggrieved Employees when they left their work areas to take their unpaid meal periods, and
20 as a result, Plaintiff and/or other non-party Aggrieved Employees were not always afforded
21 compliant, uninterrupted thirty (30) minute meal periods during shifts in which they were
22 entitled to receive meal periods.

23 56. Second, Defendants' policy of limiting overtime, coupled with Defendants'
24 assignment of heavy workloads, led Plaintiff and other non-party Aggrieved Employees to
25 work off-the-clock in order to perform required duties and complete their assigned tasks. For
26 example, Plaintiff was required review communications from management regarding
27 assignments on his personal cellular phone prior to his scheduled shifts. Additionally,
28 Plaintiff was required to spend up to five (5) minutes after each shift completing his assigned

1 duties, such as cleaning his workstation and preparing a report on the tasks performed during
2 his shift. As a result, Defendants suffered and/or permitted Plaintiff and other non-party
3 Aggrieved Employees to perform work for which they were not paid.

4 57. Third, Defendants' company-wide policy of assigning heavy workloads
5 resulted in a failure to provide other non-party Aggrieved Employees with adequate meal
6 period coverage. As a result, on information and belief, other non-party Aggrieved
7 Employees were not afforded timely, uninterrupted thirty (30) minute meal periods during
8 shifts in which they were entitled to receive meal periods. Thus, other non-party Aggrieved
9 Employees missed meal periods and/or had meal periods cut short or interrupted in order to
10 handle their workloads. Moreover, on information and belief, because Defendants frowned
11 upon employees accruing meal period penalties, Defendants' management pressured other
12 non-party Aggrieved Employees to clock in and out at designated start and end times to reflect
13 compliant meal periods, regardless of whether they had received a compliant meal period or
14 not, in order to strictly limit meal penalties that Defendants would otherwise owe.

15 58. Defendants knew or should have known that, as a result of these company-wide
16 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
17 their assigned duties off-the-clock before and after their shifts and/or during meal periods, and
18 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
19 and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more, or
20 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
21 premium pay.

22 59. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
23 correct overtime rate for the recorded overtime hours that they generated. In addition to an
24 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
25 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
26 California Labor Code, Defendants failed to incorporate all compensation, including incentive
27 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
28 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during

1 times when other non-party Aggrieved Employees worked overtime and received these other
2 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate
3 than required.

4 60. For example, Defendants paid other non-party Aggrieved Employees
5 nondiscretionary bonuses and/or incentive pay. During pay periods that other non-party
6 Aggrieved Employees were paid overtime wages, Defendants failed to incorporate the
7 nondiscretionary bonuses and/or incentive pay into other non-party Aggrieved Employees'
8 regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime
9 hours worked. Specifically, Defendants paid other non-party Aggrieved Employees 1.5 times
10 their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants' failure to
11 properly calculate the overtime rates of pay based on all remuneration paid has resulted in an
12 underpayment of overtime wages to other non-party Aggrieved Employees on a company-
13 wide basis.

14 61. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
15 the balance of overtime compensation as required by California law, violates the provisions of
16 California Labor Code sections 510 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 PAY MINIMUM WAGES**

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

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

28 63. As stated above, due to Defendants' policy and/or practice of discouraging and

1 impeding Plaintiff and other non-party Aggrieved Employees from recording hours worked
2 that were outside of their scheduled shifts while simultaneously assigning heavy workloads,
3 Plaintiff and other non-party Aggrieved Employees were required to work off-the-clock
4 before and/or after their scheduled shift start and end times to don and doff their uniforms and
5 PPE, review communications from supervisors on their personal cellular phones regarding
6 work-related matters, and/or complete assigned job duties. Additionally, as set forth above,
7 Plaintiff and other non-party Aggrieved Employees were impeded from taking all
8 uninterrupted meal periods to which they were entitled and were required to work off-the-
9 clock due to Defendants' donning and doffing policy and/or assignment of heavy workloads.
10 Further, as stated, in order to prevent employees from accruing meal period penalties, upon
11 information and belief, Defendants systematically failed to pay other non-party Aggrieved
12 Employees for actual hours worked during unpaid meal periods because these hours were not
13 always correctly recorded.

14 64. Moreover, Defendants maintained and implemented a company-wide policy of
15 requiring employees to undergo mandatory drug testing and/or physical examinations. At all
16 times, Defendants were in control of scheduling the dates and times for the testing and/or
17 examinations, selecting the provider/facility where the testing and/or examinations were to
18 take place, and determining the scope of the testing and/or examinations. Defendants gave
19 other non-party Aggrieved Employees strict instructions to obtain drug testing and/or physical
20 examinations, and other non-party Aggrieved Employees underwent the testing and/or
21 examinations for the sole benefit of Defendants. Other non-party Aggrieved Employees were
22 required to travel in their own personal vehicles or obtain alternate transportation and spend
23 time undergoing Defendants' mandatory drug tests and/or physical examinations. However,
24 Defendants did not compensate non-party Aggrieved Employees for the time they spent
25 traveling to and from the medical facilities and for the time they spent undergoing the
26 mandatory drug testing and/or physical examinations.

27 65. Thus, Defendants did not pay at least minimum wages for all hours worked by
28 Plaintiff and other non-party Aggrieved Employees. To the extent that these off-the-clock

1 hours did not qualify for overtime premium payment, Defendants did not pay at least
2 minimum wages for those hours worked off-the-clock in violation of California Labor Code
3 sections 1182.12, 1194, 1197, and 1198.

4 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
5 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
6 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
7 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

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

20 69. At all relevant times herein set forth, California Labor Code sections 226.7,
21 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
22 meal period mandated by an applicable order of the IWC.

23 70. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
24 1198, and the applicable IWC Wage Order also require employers to provide a second meal
25 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
26 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
27 the total hours worked is no more than twelve (12) hours, the second meal period may be
28 waived by mutual consent of the employer and the employee only if the first meal period was

1 not waived.

2 71. During the relevant time period, Defendants had, and continue to have, a
3 company-wide policy and/or practice of requiring employees to don and doff required
4 uniforms and PPE when leaving their work areas, which prevented Plaintiff and/or other non-
5 party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they
6 were entitled. For example, at the start of each meal period, Plaintiff and/or other non-party
7 Aggrieved Employees were required to wait in line for “ungowning” before they were
8 permitted to exit their work areas. At the end of their meal periods, Plaintiff and/or other non-
9 party Aggrieved Employees were also required to wait in line again to don their uniforms
10 and/or PPE in the “gowning” room before returning to their workstations. As noted above, the
11 “gowning” areas only permitted up to four (4) employees at a time. Given that there were
12 approximately 40 to 80 employees on each shift, this policy led to significant delays at the
13 start and end of each meal period, which resulted in Plaintiff’s and/or other non-party
14 Aggrieved Employees’ meal periods being cut short.

15 72. Defendants also had, and continue to have, company-wide policies and/or
16 practices of assigning heavy workloads and discouraging employees from incurring overtime,
17 which resulted in a lack of meal period coverage and prevented other non-party Aggrieved
18 Employees from taking all timely meal periods to which they were entitled. As a result, other
19 non-party Aggrieved Employees were forced to work in excess of five (5) hours before taking
20 a meal period, and, at times, had their meal periods interrupted and/or had to forgo their meal
21 periods altogether. Moreover, Defendants did not provide other non-party Aggrieved
22 Employees with all second 30-minute meal periods on days that they worked in excess of ten
23 (10) hours in one day. Plaintiff and other non-party Aggrieved Employees did not sign valid
24 meal period waivers on days that they were entitled to meal periods and were not relieved of
25 all duties.

26 73. Defendants knew or should have known that as a result of their policies,
27 Plaintiff and/or other non-party Aggrieved Employees were not actually relieved of all duties
28 to take timely, uninterrupted meal periods. Defendants further knew or should have known

1 that they did not pay Plaintiff and/or other non-party Aggrieved Employees meal period
2 premiums when they were missed, late, short, and/or interrupted.

3 74. As stated, because Defendants frowned upon employees accruing meal period
4 penalties, upon information and belief, Defendants pressured other non-party Aggrieved
5 Employees to clock out for meal periods at designated start and end times to reflect compliant
6 meal periods, regardless of whether they had received a compliant meal period, in order to
7 limit meal penalties that Defendants would otherwise owe.

8 75. Furthermore, Defendants engaged in a company-wide practice and/or policy of
9 not paying meal period premiums owed when compliant meal periods were not provided.
10 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
11 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
12 to the extent that Defendants did pay other non-party Aggrieved Employees meal period
13 premium pay for missed, late, and interrupted meal periods, Defendants did not pay other non-
14 party Aggrieved Employees at the correct rate of pay for premiums because Defendants
15 systematically failed to include all forms of compensation, such as, incentive pay,
16 nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
17 regular rate of pay.

18 76. Thus, Defendants failed to provide Plaintiff and/or other non-party Aggrieved
19 Employees compliant meal periods and failed to pay the full meal period premiums due.
20 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
21 sections 226.7, 512(a), 516, and 1198. Plaintiff and/or other non-party Aggrieved Employees
22 are therefore entitled to recover civil penalties pursuant to California Labor Code sections 558
23 and/or 2699(a), (f), and (g).

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

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

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

1 78. At all relevant times, the applicable IWC Wage Order provides that “[e]very
2 employer shall authorize and permit all employees to take rest periods, which insofar as
3 practicable shall be in the middle of each work period” and that the “rest period time shall be
4 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
5 hours or major fraction thereof” unless the total daily work time is less than three and one-half
6 (3 ½) hours.

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

15 80. Pursuant to the applicable IWC Wage Order and California Labor Code section
16 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
17 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
18 required rest period was not authorized and permitted.

19 81. During the relevant time period, Defendants regularly failed to authorize and
20 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
21 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
22 Defendants’ policies and/or practices, including their donning and doffing policy and
23 assignment of heavy workloads, prevented Plaintiff and other non-party Aggrieved Employees
24 from being relieved of all duty to take rest periods.

25 82. Additionally, on information and belief, during the relevant time period,
26 Defendants maintained and implemented a company-wide on-premises rest period policy,
27 which mandated that Plaintiff and/or other non-party Aggrieved Employees remain on the
28 work premises during their rest periods. Because Plaintiff and/or other non-party Aggrieved

1 Employees were restricted from leaving the premises during rest periods, they were denied the
2 ability to use their rest periods freely for their own purposes, such as running personal errands.
3 Thus, Defendants effectively maintained control over Plaintiff and/or other non-party
4 Aggrieved Employees during rest periods.

5 83. As a result of Defendants' practices and policies, Plaintiff and other non-party
6 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
7 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
8 were entitled. For example, Plaintiff's rest periods were cut short due to time spent waiting in
9 line as well as doffing and donning his uniform and/or PPE at the start and end of each rest
10 period.

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

20 85. Defendants' conduct violates the applicable IWC Wage Order and California
21 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
22 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
23 558 and/or 2699(a), (f), and (g).

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

26 86. At all relevant times herein, California Labor Code section 226(a) provides that
27 every employer shall furnish each of his or her employees an accurate and complete itemized
28 wage statement in writing, including, but not limited to, the name and address of the legal

1 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
2 applicable rates of pay.

3 87. During the relevant time period, Defendants have knowingly and intentionally
4 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
5 inaccurate wage statements. For example, Defendants issued uniform wage statements to
6 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
7 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
8 the pay period, including rates of pay for overtime wages and/or meal and rest period
9 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,
10 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

11 88. Because Defendants did not record the time Plaintiff and other non-party
12 Aggrieved Employees spent working off-the-clock and deducted time from their records for
13 meal periods that were interrupted and/or missed (and therefore time for which they should
14 have been paid), Defendants did not list the correct amount of gross wages and net wages
15 earned by Plaintiff and other non-party Aggrieved Employees, in compliance with section
16 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
17 number of hours worked by Plaintiff and other non-party Aggrieved Employees in violation of
18 section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay
19 period and the corresponding accurate number of hours worked at each hourly rate, in
20 violation of section 226(a)(9).

21 89. In addition, because Defendants did not calculate Plaintiff's and other non-
22 party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime
23 wages and/or meal and rest period premiums, Defendants did not list the correct amount of
24 gross wages in compliance with section 226(a)(1) and did not list the correct amount of net
25 wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable
26 hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages
27 and/or meal and rest period premiums, in violation of section 226(a)(9).

28 90. The wage statement deficiencies also include, without limitation, failing to list

1 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
2 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
3 for which aggrieved employees were paid; failing to list the name of the employee and only
4 the last four digits of his or her social security number or an employee identification number
5 other than a social security number; failing to list the name and address of the legal entity that
6 is the employer; and/or failing to state all hours worked as a result of not recording or stating
7 hours worked off-the-clock.

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

18 92. California Labor Code section 1198 provides that the maximum hours of work
19 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
20 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
21 employment of any employees for longer hours than those fixed by the order or under
22 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
23 Wage Order, employers are required to keep accurate time records showing when the
24 employee begins and ends each work period and meal period. During the relevant time
25 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
26 and meal period start and end times for Plaintiff and other non-party Aggrieved Employees in
27 violation of section 1198. Furthermore, in light of Defendants’ failure to provide other non-
28 party Aggrieved Employees with second 30-minute meal periods to which they were entitled,

Defendants kept no records of meal start and end times for second meal periods.

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

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

94. At all relevant times herein set forth, 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. Labor Code section 204 further provides 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.

95. At all relevant times herein, 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, at all relevant times herein, 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.

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

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

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1 **FAILURE TO PAY WAGES UPON TERMINATION**

2 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

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

10 99. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
11 Employees who are no longer employed by Defendants their earned and unpaid wages set
12 forth above, including but not limited to, overtime wages, minimum wages, and/or meal and
13 rest period premiums, either at the time of discharge or within seventy-two (72) hours of their
14 leaving Defendants' employ.

15 100. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
16 who are no longer employed by Defendants their wages earned and unpaid at the time of
17 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
18 California Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved
19 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
20 256 and/or 2699(a), (f), and (g).

21 **UNLAWFUL REQUIREMENT FOR RELEASE OF CLAIMS AS A CONDITION TO**
22 **RECEIVING WAGES**

23 **VIOLATION OF LABOR CODE SECTION 206.5**

24 101. California Labor Code section 206.5 prohibits employers from requiring
25 employees to execute releases of a claim or right "on account of wages due, or to become due,
26 or made as an advance on wages to be earned, unless payment of those wages has been made.
27 A release required or executed in violation of the provisions of this section shall be null and
28 void as between the employer and the employee."

1 102. During the relevant time period, Defendants required Plaintiff and other non-
2 party Aggrieved Employees to release their claims for unpaid wages as a condition to
3 receiving their final paychecks. For example, prior to receiving his final paycheck,
4 Defendants required Plaintiff to sign a form attesting that, “[t]o the best of my knowledge,
5 there is no additional money owed to me by Visby Medical, Inc. at the present time.”
6 Defendants compelled Plaintiff and other non-party Aggrieved Employees to sign these false
7 verifications when they, in fact, had not received all earned and unpaid wages, including but
8 not limited to, overtime wages, minimum wages, and/or meal and rest period premiums.

9 103. Defendants’ policy and practice of requiring Plaintiff and other non-party
10 Aggrieved Employees to release their claims uncompensated hours worked and/or other pay
11 owed to them as a condition to receiving their wages is in violation of California Labor Code
12 section 206.5. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
13 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

14 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATIONS**
15 **VIOLATION OF LABOR CODE SECTION 222.5**

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

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

28 106. For example, other non-party Aggrieved Employees were instructed by

1 Defendants to travel to a designated medical facility and obtain a drug test and/or physical
2 examination. Other non-party Aggrieved Employees followed Defendants' instructions,
3 traveled to and from the medical facility and underwent the mandatory drug testing and/or
4 physical examinations. However, Defendants did not compensate other non-party Aggrieved
5 Employees for the time they spent traveling to and from the medical facility, for the time they
6 spent undergoing the testing and/or physical examinations, or reimburse them for the travel
7 expenses they incurred getting to and from the medical facility. Defendants' policy and/or
8 practice of not paying for all costs other non-party Aggrieved Employees incurred obtaining
9 mandatory drug testing and/or physical examinations is in violation of California Labor Code
10 section 222.5

11 107. 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 REIMBURSE NECESSARY BUSINESS EXPENSES**

14 **VIOLATION OF LABOR CODE SECTION 2802**

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

25 109. First, during the relevant time period, Defendants, on a company-wide basis,
26 required that Plaintiff and other non-party Aggrieved Employees use their own personal
27 cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them
28 for the costs of their work-related cellular phone expenses. For example, Plaintiff and other

1 non-party Aggrieved Employees were required to review assignments and communicate with
2 management regarding work-related matters on their personal cellular phones. Defendants
3 also required Plaintiff and other non-party Aggrieved Employees to download applications
4 onto their personal cellular phones to conduct company business. For example, Plaintiff was
5 required to download a mobile application to fill out his timesheets and to review and respond
6 to work-related emails. Although Defendants required Plaintiff and other non-party
7 Aggrieved Employees to utilize their personal cellular phones and/or cellular data to carry out
8 their work-related responsibilities, Defendants failed to fully reimburse them for this cost.

9 110. Second, as stated, Defendants had a company-wide policy of requiring other
10 non-party Aggrieved Employees to travel in their personal vehicles or alternate transportation
11 to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for
12 their travel expenses, including mileage. At all times, Defendants were in control of
13 scheduling the date and time for the testing and/or physical examinations, selecting the
14 provider or facility where the testing and/or physical examinations were to take place, and
15 determining the scope of the testing and/or physical examinations. Defendants gave other
16 non-party Aggrieved Employees strict instructions to obtain drug testing and/or physical
17 examinations, and other non-party Aggrieved Employees underwent the testing and/or
18 examinations for the sole benefit of Defendants. Although Defendants required other non-
19 party Aggrieved Employees to use their own vehicles or obtain alternate transportation to
20 undergo mandatory drug testing and/or physical examinations, Defendants never reimbursed
21 them for their travel expenses.

22 111. Defendants could have provided other non-party Aggrieved Employees with the
23 actual tools for use on the job, such as company phones and company vehicles, to be used for
24 fulfilling work-related tasks. Or, Defendants could have fully reimbursed employees for the
25 costs of their cellular phone usage, mileage, and travel expenses. Instead, Defendants passed
26 these operating costs off onto Plaintiff and other non-party Aggrieved Employees.

27 112. Defendants' company-wide policy and/or practice of passing on their operating
28 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code

1 section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
2 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

6 113. California's Wage Theft Prevention Act was enacted to ensure that employers
7 provide employees with basic information material to their employment relationship at the
8 time of hiring, and to ensure that employees are given written and timely notice of any
9 changes to basic information material to their employment. Codified at California Labor
10 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
11 employer must provide written notice to employees containing basic and material payroll
12 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
13 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
14 overtime, the regular payday designated by the employer, and any allowances claims as part
15 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
16 (C).

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

20 115. Defendants' failure to provide Plaintiff and other non-party Aggrieved
21 Employees with written notice of basic information regarding their employment with
22 Defendants is in violation of California Labor Code section 2810.5. Plaintiff and other
23 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
24 Labor Code sections 2699(a), (f), and (g).

25 **REQUEST FOR JURY TRIAL**

26 Plaintiff requests a trial by jury.

27 **PRAYER FOR RELIEF**

28 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and

judgment against Defendants, jointly and severally, as follows:

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

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 206.5 (by requiring employees to release claims as a condition to receive paychecks); 222.5 (by failing to pay the costs of mandatory physical examinations and/or drug testing); 2802 (by failing to reimburse business expenses) and 2810.5 (by failing to provide written notice of information material to employment);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

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

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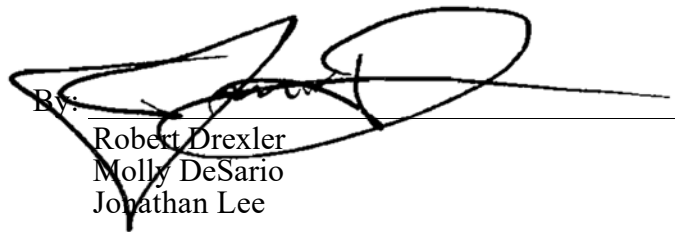
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1 6. For such other and further relief as the Court may deem equitable and
2 appropriate.

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4 Dated: September 27, 2021

Respectfully submitted,

Capstone Law APC

6
7  By: _____
8 Robert Drexler
9 Molly DeSario
Jonathan Lee

10 Attorneys for Plaintiff Romulo Adriano
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Exhibit 1

MICHELLE KENNEDY
310.712.8146 Direct
Michelle.Kennedy@capstonelawyers.com

July 23, 2021

VIA ONLINE SUBMISSION

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

Subject: *Romulo Adriano v. Visby Medical, Inc.*

Dear PAGA Administrator:

This office represents Romulo Adriano in connection with his claims under the California Labor Code. Mr. Adriano was an employee of VISBY MEDICAL, INC. (“VISBY”).

The employer may be contacted directly at the address below:

VISBY MEDICAL, INC.
3010 NORTH FIRST ST
SAN JOSE CA 95134

Mr. Adriano 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”). Mr. Adriano seeks relief on behalf of himself, the State of California, and other persons who are or were employed by VISBY 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.

VISBY employed Mr. Adriano as an hourly paid, non-exempt employee from approximately June 2020 to November 2020. Mr. Adriano worked as an Operator for Visby at its facility in San Jose, California. During his employment, Mr. Adriano typically worked eight (8) hours or more per day, and five (5) or more days per week. At the time his employment ended, Mr. Adriano was compensated approximately \$22.00 per hour. His job duties included, without limitation, assembling hardware for polymerase chain reaction (PCR) diagnostic kits, organizing and updating inventory counts for manufacturing, and conducting PCR testing for COVID-19.

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

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

VISBY MEDICAL, INC. is a California corporation which produces medical diagnostic devices, such as PCR testing for specific viruses and diseases throughout the United States. Upon information and belief, VISBY maintains a single, centralized Human Resources (HR) department at its company headquarters in San Jose, California, for all non-exempt, hourly paid employees working for VISBY in California, including Mr. Adriano and other aggrieved employees. At all relevant times, VISBY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Adriano and other aggrieved employees, regardless of their location or position.

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

VISBY willfully failed to pay all overtime wages owed to Mr. Adriano and other aggrieved employees. During the relevant time period, Mr. Adriano and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Mr. Adriano’s experience and counsel’s review of those records currently available relating to Mr. Adriano’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, Mr. Adriano reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, during the relevant time period, VISBY had a company-wide policy and/or practice of discouraging and impeding Mr. Adriano and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, VISBY's policy and/or practice is to simply pay employees, including Mr. Adriano and other aggrieved employees, for the hours they are scheduled to work, and not the actual hours worked, by pressuring Mr. Adriano and other aggrieved employees to only report the hours they are scheduled to work and thus work off-the-clock before and after their scheduled shift times. For example, Mr. Adriano and other aggrieved employees were required to spend time donning and doffing required uniforms and personal protective equipment (PPE). During the relevant time period, Mr. Adriano and other aggrieved employees were required to change into their uniforms and PPE at VISBY's facility; however, VISBY did not allow Mr. Adriano and other aggrieved employees to report the time spent donning and doffing their uniforms and PPE as hours worked, despite being on VISBY's premises and under VISBY'S control. Specifically, Mr. Adriano and other aggrieved employees were instructed to arrive up to 15 minutes prior to the start of their scheduled shifts for donning their uniforms and PPE. However, the "gowning" areas could only accommodate up to four (4) employees at a time, for a group of approximately 40 to 80 employees, resulting in significant time spent waiting off-the-clock prior to each shift. In addition, Mr. Adriano and other aggrieved employees were similarly required to spend time doffing their uniforms and PPE at the end of each shift. VISBY's donning and doffing policy also applied to Mr. Adriano and other aggrieved employees when they left their work areas to take their unpaid meal periods, and as a result, Mr. Adriano and/or other aggrieved employees were not always afforded compliant, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods.

Second, VISBY's policy of limiting overtime, coupled with VISBY's assignment of heavy workloads, led Mr. Adriano and other aggrieved employees to work off-the-clock in order to perform required duties and complete their assigned tasks. For example, Mr. Adriano was required review communications from management regarding assignments on his personal cellular phone prior to his scheduled shifts. Additionally, Mr. Adriano was required to spend up to five (5) minutes after each shift completing his assigned duties, such as cleaning his workstation and preparing a report on the tasks performed during his shift. As a result, VISBY suffered and/or permitted Mr. Adriano and other aggrieved employees to perform work for which they were not paid.

Third, VISBY's company-wide policy of assigning heavy workloads resulted in a failure to provide other aggrieved employees with adequate meal period coverage. As a result, on information and belief, other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. Thus, other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. Moreover, on information and belief, because VISBY frowned upon employees accruing meal period penalties, VISBY's management pressured other aggrieved employees to clock in and out at designated start and end times to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that VISBY would otherwise owe

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

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

Accordingly, Mr. Adriano 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. Mr. Adriano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

As stated, due to VISBY's company-wide policies and/or practices of discouraging and impeding Mr. Adriano and other aggrieved employees from recording hours worked that were outside of their scheduled shifts while simultaneously assigning heavy workloads, Mr. Adriano and other aggrieved employees were required to work off-the-clock before and/or after their scheduled shift start and end times to don and doff their uniforms and PPE, review communications from supervisors on their personal cellular phones regarding work-related matters, and/or complete assigned job duties. Additionally, as set forth above, Mr. Adriano and/or other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock due to VISBY's donning and doffing policy and/or assignment of heavy workloads. Further, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, VISBY systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Moreover, VISBY 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, VISBY 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. VISBY 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 VISBY. Other aggrieved

employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing VISBY's mandatory drug tests and/or physical examinations. However, VISBY 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, VISBY did not pay at least minimum wages for all hours worked by Mr. Adriano and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, VISBY 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, 1197.1, and 1198.

Accordingly, VISBY regularly failed to pay at least minimum wages to Mr. Adriano 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. Mr. Adriano 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.

During the relevant time period, as stated, VISBY had, and continues to have, a company-wide policy and/or practice of requiring employees to don and doff required uniforms and PPE when leaving their work areas, which prevented Mr. Adriano and/or other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. For example, at the start of each meal period, Mr. Adriano and/or other aggrieved employees were required to wait in line for "ungowning" before they were permitted to exit their work areas. At the end of their meal periods, Mr. Adriano and/or other aggrieved employees were also required to wait in line again to don their uniforms and/or PPE in the "gowning" room before returning to their workstations. As noted above, the "gowning" areas only permitted up to four (4) employees at a time. Given that there were approximately 40 to 80 employees on each shift, this policy led to significant delays at the start and end of each meal period, which resulted in Mr. Adriano's and/or other aggrieved employees' meal periods being cut short.

VISBY also had, and continues to have, company-wide policies and/or practices of assigning heavy workloads and discouraging employees from incurring overtime, which resulted in a lack of meal period coverage and prevented other aggrieved employees from taking all timely meal periods to which they were entitled. As a result, other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. Moreover, VISBY 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. Mr. Adriano 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.

At all times herein mentioned, VISBY knew or should have known that, as a result of these policies, Mr. Adriano and/or other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. VISBY further knew or should have known that it did not pay Mr. Adriano and/or other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed. As stated, because VISBY frowned upon employees accruing meal period penalties, upon information and belief, VISBY pressured other aggrieved employees to clock out for meal periods at designated start and end times to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to limit meal penalties that VISBY would otherwise owe.

Moreover, VISBY 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 VISBY's practices and/or policies, Mr. Adriano and/or other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that VISBY did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, VISBY did not pay other aggrieved employees at the correct rate of pay for premiums because VISBY 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, VISBY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Adriano and/or 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, VISBY regularly failed to authorize and permit Mr. Adriano 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, VISBY’s company-wide practices, including its donning and doffing policy and assignment of heavy workloads, prevented Mr. Adriano and other aggrieved employees from being relieved of all duty to take rest periods.

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

As a result of VISBY’s practices and policies, Mr. Adriano 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, Mr. Adriano’s rest periods were cut short due to time spent waiting in line as well as doffing and donning his uniform and/or PPE at the start and end of each rest period.

VISBY 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, Mr. Adriano and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that VISBY did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, VISBY did not pay other aggrieved employees at the correct rate of pay for premiums because VISBY 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, VISBY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Adriano 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. VISBY has not provided Mr. Adriano 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, VISBY has knowingly and intentionally provided Mr. Adriano and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, VISBY issued uniform wage statements to Mr. Adriano 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, VISBY violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because VISBY did not record the time Mr. Adriano and other aggrieved employees spent working off-the-clock, VISBY did not list the correct amount of gross wages and net wages earned by Mr. Adriano and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, VISBY failed to accurately list the total number of hours worked by Mr. Adriano 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 VISBY did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime and/or meal and rest period premiums, VISBY did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, VISBY also failed to list the correct amount of net wages in violation of section 226(a)(5). VISBY also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime and/or meal and rest period premiums, 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 inclusive dates of the period for which aggrieved employees were paid; 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; 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), VISBY willfully failed to maintain accurate payroll records for Mr. Adriano 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 Order. 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, VISBY failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Adriano and other aggrieved employees, in violation of section 1198. Furthermore, in light of VISBY’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, VISBY kept no records of meal start and end times for second meal periods.

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

Mr. Adriano 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, VISBY failed to pay Mr. Adriano 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.

Mr. Adriano 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.

VISBY willfully failed to pay Mr. Adriano and other aggrieved employees who are no longer employed by VISBY 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 VISBY's employ.

Mr. Adriano 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 § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee." Labor Code section 206.5 further provides that " 'execution of a release' includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false."

During the relevant time period, VISBY required Mr. Adriano and other aggrieved employees to release their claims for unpaid wages as a condition of receiving their final paychecks. For example, prior to receiving his final paycheck, VISBY required Mr. Adriano to sign a form attesting that, "To the best of my knowledge, there is no additional money owed to me by Visby Medical, Inc. at the present time." VISBY compelled Mr. Adriano and other aggrieved employees to sign these false verifications when they, in fact, had not received all earned and unpaid wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums.

VISBY's policy and practice of requiring Mr. Adriano and other aggrieved employees to release their claims for uncompensated hours worked and/or other pay owed to them as a condition to receiving their wages is in violation of California Labor Code section 206.5. Mr. Adriano and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 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, VISBY 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, VISBY 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, VISBY 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, VISBY 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. VISBY'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 No. 4-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, VISBY, on a company-wide basis, required that Mr. Adriano and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Mr. Adriano and other aggrieved employees were required to review assignments and communicate with management regarding work-related matters on their personal cellular phones. VISBY also required Mr. Adriano and other aggrieved employees to download applications onto their personal cellular phones to conduct company business. For example, Mr. Adriano was required to download a mobile application to fill out his timesheets and to review and respond to work-related emails. Although VISBY required Mr. Adriano and other aggrieved employees to utilize their personal cellular phones and/or cellular data to carry out their work-related responsibilities, VISBY failed to fully reimburse them for this cost.

Second, as stated, VISBY 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, VISBY 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 VISBY required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, VISBY never reimbursed them for their travel expenses.

VISBY could have provided Mr. Adriano and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles, to be used for fulfilling work-related

tasks. Or, VISBY could have fully reimbursed employees for the costs of their cellular phone usage, mileage, and travel. Instead, VISBY passed these operating costs off onto Mr. Adriano and other aggrieved employees. At all relevant times, Ms. VISBY did not earn at least two (2) times the minimum wage.

Thus, VISBY 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. Mr. Adriano 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 § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

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

Mr. Adriano and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 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." VISBY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Adriano's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Adriano seeks the remedies set forth in Labor Code section 558 for himself, 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, Mr. Adriano, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against VISBY for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

1. VISBY shall pay Mr. Adriano and all other aggrieved employees employed by VISBY at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. VISBY 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. VISBY shall conduct a survey or interview all current and former aggrieved employees in California who worked for VISBY 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, cellular phone expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. VISBY 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. VISBY 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. VISBY shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for VISBY's benefit, including, but not limited to, costs of cellular phone use, mandatory medical examinations, travel expenses, mileage, or other expenditures, as required by Labor Code sections 222.5 and 2802.

6. VISBY shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. VISBY shall provide Mr. Adriano and all aggrieved employees employed by VISBY 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. VISBY shall cease the practice of requiring all aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks in violation of Labor Code section 206.5.
9. VISBY 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. VISBY 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 IWC Wage Order No. 4-2001, section 20.

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

Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Michelle Kennedy

Copy: VISBY MEDICAL, INC. (via U.S. Certified Mail)

UNITED STATES POSTAGE
 PITNEY BOWES
 \$008.08
 02 1P
 0000666553
 MAILED FROM ZIP CODE 90067



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 VISBY MEDICAL, INC.
 3010 NORTH FIRST ST
 SAN JOSE CA 95134



9590 9402 1512 5362 2502 04

2. Article Number (Transfer from service label)

7020 1810 0000 4166 0903

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Registered Mail
- ☐ Registered Mail Restricted Delivery (\$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

CERTIFIED MAIL®



7020 1810 0000 4166 0903

VISBY MEDICAL, INC.
 3010 NORTH FIRST ST
 SAN JOSE CA 95134

**U.S. Postal Service™
 CERTIFIED MAIL® RECEIPT
 Domestic Mail Only**

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.60

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.85
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

VISBY MEDICAL, INC.

Street and Apt. No., 3010 NORTH FIRST ST

City, State, ZIP+4® SAN JOSE CA 95134

Postmark
 Here

Adriano V. Visby
 Medical, Inc.

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions.

tone
 LAW APC
 ury Park East, Ste 1000
 s, CA 90067

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

VISBY MEDICAL, INC.
3010 NORTH FIRST ST
SAN JOSE CA 95134



9590 9402 1512 5362 2502 04

2. Article Number (Transfer from service label)

7020 1810 0000 4166 0903

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X MS 3402 C19

☐ Agent

☐ Addressee

B. Received by (Printed Name)

MS

C. Date of Delivery

7/27/11

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Registered Mail
- ☐ Registered Mail Restricted Delivery (\$50®)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt