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Assigned for all Purposes

Judge Glenda Sanders

CX-101

Attorney for Plaintiff CLAUDIA COLINDRES

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**THE COUNTY OF ORANGE**

CLAUDIA COLINDRES,

Plaintiff,

v.

QUEST DIAGNOSTICS CLINICAL  
LABORATORIES, INC.; and DOES 1 through  
50, inclusive,

Defendants.

Case No.: 30-2021-01230488-CU-OE-CXC

**COMPLAINT FOR CIVIL PENALTIES**

1. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Pay all Regular and Overtime Wages;
2. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Reimburse for Necessary Business Expenditures;
6. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Provide Suitable Seating; and
7. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Pay all Wages Due upon Termination of Employment.

1 Plaintiff CLAUDIA COLINDRES (“Plaintiff”) complains and alleges as follows:

2 **INTRODUCTION**

3 1. This is a representative action brought pursuant to the Private Attorneys General  
4 Act, Labor Code section 2698, et seq. (“PAGA”) on behalf of Plaintiff and all similarly-aggrieved  
5 employees who were subjected to one or more of the violations alleged herein (“Aggrieved  
6 Employees”) by Defendant Quest Diagnostics Laboratories, Inc. (“Defendant”).

7 2. The term “PAGA PERIOD” is defined as one (1) year and sixty-five (65) days  
8 prior to the filing of this complaint. Plaintiff reserves the right to amend this complaint to reflect  
9 a different “PAGA PERIOD” as further discovery is conducted.

10 3. “Aggrieved Employees” is defined as non-exempt hourly-paid employees  
11 throughout California employed by Defendant during the PAGA period.

12 4. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief  
13 against Defendant for violations of numerous Labor Code provisions, including, but not limited  
14 to, sections 201, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802 for: (1) failure to  
15 pay all regular and overtime wages due, (2) provide meal periods or premium compensation in  
16 lieu thereof, (3) failure to provide rest periods or premium compensation in lieu thereof, (4) failure  
17 to provide accurate itemized wage statements, (5) failure to reimburse for necessary business  
18 expenditures, (6) failure to provide suitable seating, and (7) failure to pay all wages due upon  
19 termination of employment.

20 5. At all relevant times herein, Defendant has consistently maintained and enforced  
21 the following unlawful policies and practices against Plaintiff:

- 22 a. Willfully refusing to pay for all hours worked, including both regular and  
23 overtime wages;
- 24 b. Willfully refusing to permit off-duty meal periods or provide premium  
25 compensation in lieu thereof;
- 26 c. Willfully refusing to permit rest periods or provide premium compensation in  
27 lieu thereof;
- 28 d. Willfully refusing to furnish accurate itemized wage statements;

- e. Willfully refusing to reimburse for necessary business expenditures;
- f. Willfully refusing to provide adequate seating; and
- g. Willfully refusing to pay all wages due upon separation of employment.

6. This Court has subject matter jurisdiction over the causes of action alleged in this complaint as a Court of general subject matter jurisdiction and is not otherwise excluded from exercising subject matter jurisdiction over said causes of action. The penalties recoverable for Plaintiff individually do not exceed seventy-five thousand dollars (\$75,000.00), and collectively amongst all Aggrieved Employees do not exceed five million dollars (\$5,000,000.00).

### **JURISDICTION AND VENUE**

7. Defendant, Quest Diagnostics Clinical Laboratories, Inc. is a Delaware Corporation with its principal executive office in New Jersey as provided in its California Secretary of State, Statement of Information, Entity File Number C0763619. There is no federal question at issue, as the issues herein are based solely on California statutes and law, including the Labor Code, Industrial Welfare Commission (“IWC”) Wage Orders, Code of Civil Procedure, Business and Professions Code, and Rules of Court. By doing business in the state of California, Defendant has purposefully availed themselves of the state’s jurisdiction. Accordingly, as personal jurisdiction over Defendant would be constitutional, California’s long-arm statute provides that California courts may exercise personal jurisdiction over Defendant. (Code Civ. Proc., § 410.10).

8. Venue is proper in the County of Orange because Defendant transacts substantial business in this County, and the acts or omissions giving rise to the causes of action in this complaint occurred in this County.

### **THE PARTIES**

#### **Plaintiff**

9. Plaintiff was employed by Defendant from 2018 until on or about September 3, 2020, at Defendant’s Irvine, California location. Throughout the PAGA Period, Plaintiff was employed by Defendant in a non-exempt, hourly position. Plaintiff and Aggrieved Employees consist of identifiable, current, and/or formerly similarly situated persons who worked for

1 Defendant as hourly-paid non-exempt employees during the PAGA period.

2 **Defendant(s)**

3 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant owns  
4 and operates clinical laboratories throughout California and maintains its headquarters in  
5 Secaucus, New Jersey, and was the employer of Plaintiff and Aggrieved Employees during the  
6 PAGA period.

7 11. Plaintiff is ignorant of the true names, capacities, relationships and extent of  
8 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,  
9 inclusive, but on information and belief, alleges that said Defendants are legally responsible for  
10 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and  
11 capacities of the DOE Defendants when that information is ascertained.

12 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
13 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
14 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant  
15 are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint  
16 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,  
17 are alter egos, joint employers, and conspire with one another to increase profits by engaging in  
18 the conduct described in this complaint.

19 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
20 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,  
21 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned  
22 below was acting, at least in part, within the course and scope of that authority as such agent,  
23 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with  
24 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant  
25 are legally attributable to the other Defendants.

26 **PAGA ADMINISTRATIVE PREREQUISITE**

27 14. Plaintiff brings this case as a representative action seeking penalties for the State  
28 of California in a representative capacity, as provided for under PAGA, Labor Code section 2698

1 *et seq.*, to the extent permitted by law, as an aggrieved employee who was employed by Defendant  
2 and did not receive all regular and overtime wages due, was not provided compliant meal or rest  
3 periods or premium compensation in lieu thereof, was not provided accurate itemized wage  
4 statements, was not reimbursed for necessary business expenditures, was not provided with  
5 suitable seating, and did not receive all wages owed upon termination of employment.

6 15. Pursuant to Labor Code section 2699.3, subdivision (a), a plaintiff may bring a  
7 cause of action under the PAGA only after giving the Labor Workforce Development Agency  
8 (LWDA) and the employer notice of the Labor Code sections alleged to have been violated, and  
9 after receiving notice from the LWDA of its intention not to investigate, or after 65 days have  
10 passed without notice from the LWDA.

11 16. On August 31, 2021, prior to the filing of this complaint, Plaintiff gave written  
12 notice of the specified provisions alleged to have been violated, including the facts and theories  
13 to support the alleged violations, as required by Labor Code section 2699.3. This written notice  
14 was given via certified mail to Defendant, and to the LWDA by electronically filing the notice  
15 via the Department of Industrial Relations website. Plaintiff was given an LWDA case number of  
16 LWDA-CM-843103-21. Attached herein as **Exhibit A** is a true and correct copy of Plaintiff's  
17 original letter sent to the LWDA on August 31, 2021.

18 17. More than 65 days have elapsed since Plaintiff submitted her August 31, 2021,  
19 notice to the LWDA and Defendant of the specific alleged Labor Code violations, and the LWDA  
20 has not provided notice to Plaintiff of its intent to investigate such alleged violations. Also,  
21 Plaintiff has not received notice of Defendant's intent to cure any of the alleged violations.  
22 Accordingly, Plaintiff has satisfied the administrative prerequisites for filing this action.

### 23 **FACTUAL ALLEGATIONS**

24 18. Plaintiff and Aggrieved Employees are, and at all times during the PAGA Period  
25 were, non-exempt employees within the meaning of the California Labor Code, and California  
26 Wage Order 4–2001 of the Industrial Welfare Commission (“IWC Wage Order”). Defendant is,  
27 and at all times during the PAGA Period was, an “employer” within the meaning of state law and  
28 IWC Wage Order 4–2001.

1           19. Defendant owns and/or operates a diagnostic laboratory in Irvine, California.  
2 During all, or a portion of the PAGA Period, Plaintiff and Aggrieved Employees were employed  
3 by Defendant in the State of California.

4           20. During the PAGA Period, Defendant was required to pay Plaintiff and Aggrieved  
5 Employees for all hours worked as well as overtime compensation for any and all hours worked  
6 in excess of eight (8) in one (1) workday and/or forty (40) in one (1) workweek.

7           21. Defendant failed to compensate Plaintiff and Aggrieved Employees at the legally  
8 mandated wage rates for all hours worked in violation of California law.

9           22. Specifically, Plaintiff and Aggrieved Employees were often required continue  
10 working after clocking out for the day. Defendant required Plaintiff and Aggrieved Employees  
11 to clock out at their scheduled shift end time regardless of whether their work was completed.

12           23. Defendant imposed a penalty of suspension or loss of one hour of pay on Plaintiff  
13 and Aggrieved Employees if they failed to clock out at the time their shift was scheduled to end.  
14 Nevertheless, Defendant required that Plaintiff and Aggrieved Employees stay and continue  
15 working after clocking out until all of their work was completed.

16           24. Additionally, Defendant frequently called Plaintiff and Aggrieved Employees  
17 outside of their working hours to request additional or clarifying information regarding their  
18 patients.

19           25. Further, on Saturdays, Plaintiff and Aggrieved Employees were scheduled to begin  
20 work at 8:00 a.m. and were required to clock out at 12:00 p.m. However, Plaintiff and Aggrieved  
21 Employees were then required to stay and finish the work which took up to an additional two  
22 hours.

23           26. Accordingly, since Plaintiff and Aggrieved Employees were not paid at all for the  
24 additional hours worked after clocking out, Defendant failed to compensate Plaintiff and  
25 Aggrieved Employees at the applicable minimum wage rate. To the extent that the  
26 aforementioned off the clock worked caused Plaintiff and Aggrieved Employees to actually work  
27 more than eight (8) hours in a workday or more than forty (40) hours in a workweek, Defendant  
28 failed to compensate Plaintiff and Aggrieved Employees at the applicable overtime rates.

1           27. During the PAGA Period, Defendant was required to permit Plaintiff and  
2 Aggrieved Employees to take one (1) uninterrupted thirty (30) minute meal period prior to the  
3 sixth (6<sup>th</sup>) hour of work. Defendant was also required to permit Plaintiff and Aggrieved  
4 Employees to take one (1) ten (10) minute rest period for every four (4) hours, or major fraction  
5 thereof worked. However, due to the nature of their work, combined with the requirements and  
6 demands of Defendant, Plaintiff and Aggrieved Employees were unable to take the meal and rest  
7 periods to which they were entitled.

8           28. Defendant scheduled Plaintiff and Aggrieved Employees in such a manner that  
9 they were precluded from taking one (1) duty-free uninterrupted meal period before the sixth (6<sup>th</sup>)  
10 hour of work and at least one (1) ten (10) minute rest period for every four (4) hours or major  
11 fraction thereof worked. Defendant prioritized work responsibilities over providing meal and rest  
12 breaks, and failed to schedule enough employees to provide relief for Plaintiff and Aggrieved  
13 Employees to take their requisite meal and rest periods.

14           29. Plaintiff and Aggrieved Employees were often required to work during their meal  
15 periods due to Defendant being understaffed. Defendant often called Plaintiff and Aggrieved  
16 Employees during their meal periods to ask work-related questions or simply required them to  
17 cut their meal period short and return to work due to business demands. Additionally, Defendant  
18 often required Plaintiff and Aggrieved Employees to complete mandatory training sessions during  
19 their meal period after telling Plaintiff and Aggrieved Employees that there was not enough time  
20 during working hours for them to complete the required training while on the clock.

21           30. Further, Plaintiff and Aggrieved Employees were frequently precluded from  
22 taking rest breaks due to the workload and demands of the Defendant. Often times, when Plaintiff  
23 and Aggrieved Employees did attempt to take a rest break, Defendant would assign them patients  
24 and require that they tend to the patients right away thereby interrupting and cutting short their  
25 rest breaks.

26           31. When Plaintiff and Aggrieved Employees were prevented from taking the required  
27 meal and rest periods, Defendant failed to compensate with a premium pay for every missed meal  
28 period and failed to compensate with a premium pay on all workdays on which a rest period was

missed.

32. Not only did Defendant fail to compensate Plaintiff and Aggrieved Employees for missed meal and rest periods, Defendant deducted thirty (30) minutes of pay every shift by requiring Plaintiff and Aggrieved Employees to clock out for thirty (30) minutes, notwithstanding the fact that Plaintiff and Aggrieved Employees were working continuously throughout that time.

33. As a result of Defendant's policies and practices of failing to provide Plaintiff and Aggrieved Employees with meal or rest breaks, or premium pay in lieu thereof, Defendant violated Labor Code sections 226.7, 512, 1194, 1197, and the applicable IWC Wage Order, and is subject to penalties under PAGA.

34. During the PAGA Period, Defendant was required to provide Plaintiff and Aggrieved Employees with complete and accurate wage statements.

35. Defendant provided Plaintiff and Aggrieved Employees with wage statements that were incomplete and inaccurate as they were not compensated for all hours worked, not compensated at the correct applicable rates, and were not provided premium pay for missed rest and meal periods.

36. By virtue of Defendant's failure to pay Plaintiff and Aggrieved Employees for all hours worked and at the appropriate overtime rate, deducting thirty (30) minutes from their pay despite not providing them with timely, uninterrupted meal breaks, and failing to provide them with premium pay in lieu thereof, Defendant also failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage statements that reflect, among other things, the net and gross wages earned, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

37. During the PAGA Period, Defendant was required to reimburse Plaintiff and Aggrieved Employees for any and all necessary business expenditures.

38. Plaintiff and Aggrieved Employees were required to wear uniforms bearing Defendant's logo and were required to wash and maintain said uniforms at their own expense and on their own time. Plaintiff and Aggrieved Employees were not reimbursed for the costs of washing and maintaining their uniforms, or for the time spent doing so, which were mandatory

requirements of their employment with Defendant.

39. Defendant's failure to provide full and complete reimbursement for all necessary business expenditures incurred by Plaintiff and Aggrieved Employees is in violation of Labor Code section 2802, and is subject to penalties under PAGA.

40. During the PAGA period, Defendant was required to provide suitable seating for Plaintiff and Aggrieved Employees pursuant to IWC Wage Order 4-2001.

41. Plaintiff and Aggrieved Employees' work duties included spending intermittent periods of time in an office at a desk and utilizing a computer. As such, Defendant was required to provide suitable seating as sitting during these times would not interfere with Plaintiff's and Aggrieved Employees' work duties. However, Defendant insisted that Plaintiff and Aggrieved Employees stand for the entirety of their eight-hour shift, notwithstanding the fact that they were not provided adequate meal and rest periods as discussed above. In fact, when Plaintiff requested that Defendant provide her a chair to sit in while she used the computer, Defendant refused to authorize it.

42. The labor conditions set forth in the applicable wage order requires employers to provide suitable seating for employees. Defendant failed or refused to do so, which is unlawful under and pursuant to section 1198 of the Labor Code. PAGA civil penalties are available for a violation of Labor Code section 1198 based on a failure to comply with the applicable wage order. (*Bright v. 99¢ Only Stores* (2010) 189 Cal.App.4<sup>th</sup> 1472.)

43. At the time that Plaintiff and any of the Aggrieved Employees employment ended, Defendant was required to compensate them for all wages owed. However, Defendant failed to compensate Plaintiff and any of the Aggrieved Employees whose employment ended during the PAGA Period for all wages owed at the time their employment ended for all hours worked or at the applicable overtime rate.

44. Additionally, Plaintiff and Aggrieved Employees had thirty (30) minutes of pay deducted from their wages each day and were entitled to compensation for those thirty (30) minutes in which they were not provided timely and uninterrupted meal periods.

45. Finally, Plaintiff and Aggrieved Employees were also owed compensation in the

1 form of premium pay for the times they worked during meal and rest periods which were not paid  
2 at the time their employment ended.

3 46. Defendant's failure to pay Plaintiff and Aggrieved Employees timely upon  
4 termination of their employment is in violation of Labor Code sections 201, 202, 203 and is  
5 subject to penalties under PAGA.

6 47. Plaintiff, by virtue of her employment with Defendant, is an aggrieved employee  
7 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve  
8 as a representative of the general public to enforce California's labor laws, and the penalty  
9 provisions identified in Labor Code section 2699.5.

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF PAGA FOR FAILURE TO PAY ALL WAGES**

12 **(Labor Code §§ 204, 510, 1194, and 1197)**

13 **(Plaintiff Against All Defendants)**

14 48. Plaintiff realleges and incorporates by reference all preceding paragraphs as  
15 though fully set forth herein.

16 49. Pursuant to Labor Code section 204, subdivision (a), "[a]ll wages ... earned by  
17 any person in any employment are due and payable twice during each calendar month."

18 50. Labor Code section 1194 mandates that employers pay employees no less than the  
19 minimum wage for each hour worked, and Labor Code section 1197 holds that "the payment of  
20 a lower wage than the minimum so fixed is unlawful."

21 51. Pursuant to Labor Code section 510, subdivision (a), "[a]ny work in excess of eight  
22 hours in one workday and any work in excess of 40 hours in any one workweek ... shall be  
23 compensated at the rate of no less than one and one-half times the regular rate of pay for an  
24 employee."

25 52. Defendant mandated that Plaintiff and Aggrieved Employees clock out at their  
26 scheduled shift end time every day regardless of when they actually completed their work for the  
27 day. Plaintiff and Aggrieved Employees were then required to continue working after clocking  
28 out until all of their work was completed. On Saturdays, Plaintiff and Aggrieved Employees were

1 scheduled to work from 8:00 a.m. until 12:00 p.m. Plaintiff and Aggrieved Employees were  
2 required to clock out at 12:00 p.m. yet continue working until the work was done which  
3 sometimes took up to an additional two hours. Defendant imposed a penalty of suspension or a  
4 deduction of one (1) hour of pay if Plaintiff and Aggrieved Employees did not clock out at the  
5 time their shift was scheduled to end.

6 53. Additionally, Defendant often contacted Plaintiff and Aggrieved Employees while  
7 they were off the clock to ask work-related questions.

8 54. Thus, Defendant failed to compensate Plaintiff and Aggrieved Employees for all  
9 hours worked in violation of Labor Code sections 510 and 1194, and is subject to penalties under  
10 PAGA. The time worked off the clock by Plaintiff and Aggrieved Employees caused the total  
11 number of hours worked to exceed eight (8) in a workday and forty (40) in a workweek, yet  
12 Defendant did not compensate Plaintiff and Aggrieved Employees at the applicable overtime rate.  
13 Defendant also deducted thirty (30) minutes of pay each workday, even though Plaintiff and  
14 Aggrieved Employees worked continuously throughout the shift without a meal period.

15 55. By virtue of Defendant's failure to pay Plaintiff and Aggrieved Employees all  
16 wages due, Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing  
17 violations incurring civil penalties, the amount of which are presently unknown, but will be  
18 ascertained according to proof at trial.

19 56. Labor Code section 1197.1 provides that "[a]ny employer ... who pays or causes  
20 to be paid to any employee a wage less than the minimum fixed by an applicable state or local  
21 law, or by an order of the commission shall be subject to a civil penalty ... as follows: (1) For any  
22 initial violation that is intentionally committed, one hundred dollars (\$100.00) for each underpaid  
23 employee for each pay period for which the employee is underpaid ... (2) For each subsequent  
24 violation for the same specific offense, two hundred fifty dollars (\$250.00) for each underpaid  
25 employee for each pay period for which the employee is underpaid regardless of whether the  
26 initial violation is intentionally committed."

27 57. Since the LWDA has not indicated that it will be investigating more than sixty-  
28 five (65) days since Plaintiff provided notice, and because Defendant took no corrective action to

1 remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of  
2 California, will seek any and all penalties otherwise capable of being collected by the Labor  
3 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in  
4 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any  
5 alleged violation of the following provisions: Labor Code sections 204, 510, 1194, and 1197.

6 58. Plaintiff is informed and believes that Defendant has violated, and continues to  
7 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of  
8 minimum wages.

9 59. Plaintiff, as a personal representative of the general public, will and does seek to  
10 recover any and all penalties for each and every violation shown to exist or to have occurred  
11 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise  
12 only available to public agency enforcement actions. Funds recovered will be distributed in  
13 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered  
14 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all  
15 Aggrieved Employees.

16 60. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and  
17 costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

18 **SECOND CAUSE OF ACTION**

19 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR**  
20 **PREMIUM COMPENSATION IN LIEU THEREOF**

21 **(Labor Code §§ 226.7 and 512)**

22 **(Plaintiff Against All Defendants)**

23 61. Plaintiff realleges and incorporates by reference all preceding paragraphs as  
24 though fully set forth herein.

25 62. Labor Code sections 226.7 and 512 and Industrial Welfare Commission (IWC)  
26 Wage Order No. 5-2001, section 11, provide that no employer shall employ any person for a  
27 work period of more than five (5) hours without providing an uninterrupted meal period of at least  
28 thirty (30) minutes.

63. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section.

64. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more than five (5) hours in a workday.

65. Plaintiff alleges that Defendant failed or refused to provide legally compliant meal periods by failing to relieve Plaintiff and Aggrieved Employees from all work duties to allow for timely and uninterrupted meal periods. Defendant's intentional conduct denied Plaintiff and Aggrieved Employees their lawfully required meal periods. Moreover, Defendant did not compensate Plaintiff and Aggrieved Employees for their missed meal periods with one hour of regular pay as required by law.

66. IWC Wage Order No. 4-2001 section 11(A), provides that if an employee is not relieved of all duties during a thirty (30) minute meal period, the meal period is considered "on duty" and counts as time worked. "On duty" meal periods are only permitted when the nature of the work prevents an employee from being relieved of all duties, in which case a written agreement between the employer and employee for an on duty paid meal period is required.

67. Here, neither of those requirements are met. The nature of Plaintiff and Aggrieved Employees work duties did not prevent them from being relieved from their duties in order to take timely and uninterrupted meal breaks. Plaintiff's and Aggrieved Employee's job duties could be paused for thirty (30) minutes or could be performed by another employee during their meal breaks, but Defendant failed to implement a work schedule that would allow Plaintiff and Aggrieved Employees to take their meal periods, and prioritized work tasks over meal period compliance. Plaintiff and Aggrieved Employees never agreed to waive their meal periods, nor were asked by Defendant to sign a waiver. Further, Defendant had a practice of deducting thirty (30) minutes pay from Plaintiff and Aggrieved Employees hours, presumably for a meal period, though none were had, proving Plaintiff and Aggrieved Employees never received on duty paid meal periods.

1           68.     During the PAGA Period, Defendant failed to schedule Plaintiff and Aggrieved  
2 Employees in such a manner as to ensure that they could take proper meal periods as required by  
3 law. When Plaintiff and Aggrieved Employees did attempt to take a meal period, Defendant often  
4 called them to ask work-related questions or simply required Plaintiff and Aggrieved Employees  
5 to cease their meal period and return to work due to business demands. Defendant also required  
6 Plaintiff and Aggrieved Employees to complete mandatory training sessions during their meal  
7 periods claiming that there was not enough time during work hours for Plaintiff and Aggrieved  
8 Employees to complete the required training.

9           69.     Defendant denied Plaintiff and Aggrieved Employees uninterrupted duty-free  
10 meal periods resulting in Plaintiff and Aggrieved Employees being forced to work during meal  
11 periods or forego them altogether. Further, Defendant failed to provide premium compensation  
12 to Plaintiff and Aggrieved Employees in lieu of their meal periods. As such, Defendant  
13 intentionally and improperly denied meal periods to Plaintiff and Aggrieved Employees in  
14 violation of Labor Code sections 226.7 and 512 and IWC Wage Order No. 4-2001, and is subject  
15 to penalties under PAGA.

16           70.     By virtue of Defendant's violation of the provisions of Labor Code sections 226.7  
17 and 512, Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing  
18 violations incurring civil penalties, the amount of which are presently unknown, but will be  
19 ascertained according to proof at trial.

20           71.     Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved  
21 Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the  
22 first initial violations and two hundred dollars (\$200.00) per pay period for each subsequent  
23 violation.

24           72.     More than sixty-five (65) days have elapsed since Plaintiff provided notice to the  
25 LWDA, and the LWDA has indicated no intention to investigate. Further, Defendant has  
26 provided no cure notice, and has not taken any steps of corrective action to remedy the allegations  
27 set forth above. Accordingly, pursuant to Labor Code sections 2699 and 2699.3, Plaintiff,  
28 individually and on behalf of the Aggrieved Employees and the State of California, seeks penalties

1 for violations of Labor Code sections 226.7 and 512 during the PAGA Period, in an amount  
2 according to proof, that would otherwise only be collected through public agency enforcement  
3 actions by the Labor Commission, the LWDA and/or the DLSE.

4 73. Plaintiff, as a personal representative of the general public, will and does seek to  
5 recover any and all penalties for each and every violation shown to exist or to have occurred  
6 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise  
7 only available to public agency enforcement actions. Funds recovered will be distributed in  
8 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered  
9 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all  
10 Aggrieved Employees.

11 74. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and  
12 costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

13 **THIRD CAUSE OF ACTION**

14 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR**  
15 **PREMIUM COMPENSATION IN LIEU THEREOF**

16 **(Labor Code § 226.7)**

17 **(Plaintiff Against All Defendants)**

18 75. Plaintiff realleges and incorporates by reference all preceding paragraphs as  
19 though fully set forth herein.

20 76. Labor Code section 226.7 and IWC Wage Order No. 4–2001, section 12, require  
21 that employers permit all employees to take a ten (10) minute rest period for every four (4) hours  
22 or major fraction thereof worked. Further, when an employer fails to provide an employee with  
23 required rest periods, the employer must pay the employee one (1) hour of pay at the employee's  
24 regular rate of pay for each workday that at a required rest period is not provided.

25 77. Plaintiff alleges that Defendant failed or refused to provide legally compliant rest  
26 periods by failing to relieve Plaintiff and Aggrieved Employees from all work duties to allow for  
27 timely and uninterrupted rest periods. Defendant's intentional conduct denied Plaintiff and  
28 Aggrieved Employees their lawfully required rest periods. Moreover, Defendant did not

1 compensate Plaintiff and Aggrieved Employees for their missed rest periods with one hour of  
2 regular pay as required by law.

3 78. During the PAGA Period, Plaintiff and Aggrieved Employees worked more than  
4 four (4) hours in a workday and Defendant failed to schedule Plaintiff and Aggrieved Employees  
5 in such a manner as to ensure that they could take proper rest periods as required by law.

6 79. When Plaintiff and Aggrieved Employees did attempt to take rest periods,  
7 Defendant would assign them new patients and required that they tend to them right away thereby  
8 interrupting and cutting short their rest breaks.

9 80. Defendant therefore denied Plaintiff and Aggrieved Employees rest periods  
10 resulting in Plaintiff and Aggrieved Employees being forced to work during rest periods or forego  
11 them altogether. Further, Defendant failed to provide premium compensation to Plaintiff and  
12 Aggrieved Employees in lieu of their rest periods. As such, Defendant intentionally and  
13 improperly denied rest periods to Plaintiff and Aggrieved Employees in violation of Labor Code  
14 section 226.7 and IWC Wage Order No. 4–2001, and is subject to penalties under PAGA.

15 81. By virtue of Defendant’s violation of the provisions of Labor Code section 226.7,  
16 Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing violations  
17 incurring civil penalties, the amount of which are presently unknown, but will be ascertained  
18 according to proof at trial.

19 82. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved  
20 Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the  
21 initial violations and two hundred dollars (\$200.00) per pay period for each subsequent violation.

22 83. More than sixty-five (65) days have elapsed since Plaintiff provided notice to the  
23 LWDA, and the LWDA has indicated no intention to investigate. Further, Defendant has  
24 provided no cure notice, and has not taken any steps of corrective action to remedy the allegations  
25 set forth above. Accordingly, pursuant to Labor Code sections 2699 and 2699.3, Plaintiff,  
26 individually and on behalf of the Aggrieved Employees and the State of California, seeks penalties  
27 for violations of Labor Code section 226.7. Plaintiff, individually and on behalf of the Aggrieved  
28 Employees and the State of California, seeks penalties for violations of Labor Code section 226.7

1 during the PAGA Period, in an amount according to proof, that would otherwise only be collected  
2 through public agency enforcement actions by the Labor Commission, the LWDA and/or the  
3 DLSE.

4 84. Plaintiff, as a personal representative of the general public, will and does seek to  
5 recover any and all penalties for each and every violation shown to exist or to have occurred  
6 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise  
7 only available to public agency enforcement actions. Funds recovered will be distributed in  
8 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered  
9 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all  
10 Aggrieved Employees.

11 85. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and  
12 costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

13 **FOURTH CAUSE OF ACTION**

14 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED**  
15 **WAGE STATEMENTS**

16 **(Labor Code § 226 and 1174)**

17 **(Plaintiff Against All Defendants)**

18 86. Plaintiff realleges and incorporates by reference all preceding paragraphs as  
19 though fully set forth herein.

20 87. Labor Code section 1174 requires employers to keep accurate payroll records.  
21 Labor Code section 226, subdivision (a), requires that "at the time of each payment of wages,"  
22 employers furnish employees with "an accurate itemized statement" that includes, *inter alia*, gross  
23 wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect  
24 during the pay period and the corresponding number of hours worked at each hourly rate.

25 88. An employee is deemed to suffer injury if the employer fails to provide a wage  
26 statement containing all of the required information set forth in Labor Code section 226,  
27 subdivision (a). (Lab. Code § 226, subd. (e)(2)). Plaintiff alleges that Defendant knowingly and  
28 intentionally failed to provide Plaintiff and Aggrieved Employees wage statements in compliance

1 with Labor Code section 226, because said statements contained inaccurate gross wages earned,  
2 an inaccurate total number of hours worked, inaccurate net wages earned, inaccurate applicable  
3 hourly rates in effect during the pay period, and an inaccurate number of hours worked at each  
4 hourly rate.

5 89. In particular, Defendant failed to include the appropriate hours, wages, and  
6 remuneration for its failure to provide Plaintiff and Aggrieved Employees meal and rest periods  
7 or premium compensation in lieu thereof, overtime compensation pursuant to the provisions of  
8 Labor Code section 510, and for any hours and wages for work Plaintiff and Aggrieved  
9 Employees were required to perform after the conclusion of, their shifts. To the extent that  
10 Plaintiff and Aggrieved Employees worked more than eight (8) hours in a workday, they were  
11 entitled to overtime wages that were not included on their wage statements. Plaintiff and  
12 Aggrieved Employees also had thirty (30) minutes deducted from their total hours worked each  
13 workday even though they worked continuously throughout the workday with no meal period.

14 90. Consequently, Plaintiff and Aggrieved Employees' wage statements reflected an  
15 inaccurate total number of hours worked, and inaccurate gross and net wages earned in violation  
16 of Labor Code sections 226 and 1174, and subject to penalties under PAGA.

17 91. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)  
18 of Section 226 shall be subject to a civil penalty in the amount of two hundred and fifty dollars  
19 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000.00) per  
20 employee for each violation in a subsequent citation, for which the employer fails to provide the  
21 employee a wage deduction statement or fails to keep the records required in subdivision (a) of  
22 Section 226. The civil penalties provided for in this section are in addition to any other penalty  
23 provided by law.

24 92. Since the LWDA has not indicated that it will be investigating more than sixty-  
25 five (65) days since Plaintiff provided notice, and because Defendant took no corrective action to  
26 remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of  
27 California, will seek any and all penalties otherwise capable of being collected by the Labor  
28 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in

1 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any  
2 alleged violation of the following provisions: Labor Code sections 226 and 1174.

3 93. Plaintiff is informed and believes that Defendant has violated, and continues to  
4 violate, provisions of the Labor Code and applicable Wage Orders related to the provision of  
5 accurate itemized wage statements.

6 94. Plaintiff, as a personal representative of the general public, will and does seek to  
7 recover any and all penalties for each and every violation shown to exist or to have occurred  
8 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise  
9 only available to public agency enforcement actions. Funds recovered will be distributed in  
10 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered  
11 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all  
12 Aggrieved Employees.

13 95. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and  
14 costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

15 **FIFTH CAUSE OF ACTION**

16 **VIOLATION OF PAGA FOR FAILURE TO REIMBURSE FOR NECESSARY**

17 **BUSINESS EXPENDITURES**

18 **(Labor Code § 2802)**

19 **(Plaintiff Against All Defendants)**

20 96. Plaintiff realleges and incorporates by reference all preceding paragraphs as  
21 though fully set forth herein.

22 97. Labor Code section 2802, subdivision (a), provides that "[a]n employer shall  
23 indemnify his or her employee for all necessary expenditures or losses incurred by the employee  
24 in direct consequence of the discharge of his or her duties, or of his or her obedience to the  
25 directions of the employer."

26 98. Defendant provided Plaintiff and Aggrieved Employees with logo bearing  
27 uniforms which they were required to wear during their employment with Defendant. However,  
28 Plaintiff and Aggrieved Employees were required to wash and maintain these uniforms at their

own expense and were not reimbursed for the costs thereof or for the time spent doing so. Defendant's failure to reimburse Plaintiff and Aggrieved Employees for maintaining their uniforms is in violation of Labor Code section 2802, and is subject to penalties under PAGA.

99. By virtue of Defendant's violation of the provisions of Labor Code section 2802, Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing violations incurring civil penalties, the amount of which are presently unknown, but will be ascertained according to proof at trial.

100. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the initial violation and two hundred dollars (\$200.00) per pay period for each subsequent violation.

101. More than sixty-five (65) days have elapsed since Plaintiff provided notice to the LWDA, and the LWDA has indicated no intention to investigate. Further, Defendant has provided no cure notice, and has not taken any steps of corrective action to remedy the allegations set forth above. Accordingly, pursuant to Labor Code sections 2699 and 2699.3, Plaintiff, individually and on behalf of the Aggrieved Employees and the State of California, seeks penalties for violations of Labor Code section 2802 during the PAGA Period, in an amount according to proof, that would otherwise only be collected through public agency enforcement actions by the Labor Commission, the LWDA and/or the DLSE.

102. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all Aggrieved Employees.

103. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

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**SIXTH CAUSE OF ACTION**  
**VIOLATION OF PAGA FOR FAILURE TO PROVIDE SUITABLE SEATING**  
**(Labor Code § 1198)**  
**(Plaintiff Against All Defendants)**

104. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

105. Regarding the Industrial Welfare Commission (IWC) Wage Orders, Labor Code section 1198 states 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.”

106. Here, IWC Wage Order 4 governs, and section 14 provides “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

107. Plaintiff and Aggrieved Employees’ work duties included spending intermittent periods of time in an office at a desk and utilizing a computer. As such, Employer was required to provide suitable seating as sitting during these times would not interfere with Plaintiff’s and Aggrieved Employees’ work duties. However, Defendant insisted that Plaintiff and Aggrieved Employees stand for the entirety of their eight-hour shift, notwithstanding the fact that they were not provided adequate meal and rest periods as discussed above. In fact, when Plaintiff requested that Defendant provide her a chair to sit in while she used the computer, Defendant refused.

108. Defendant’s refusal to provide Plaintiff and Aggrieved Employees with suitable seating is a violation of IWC Wage Order No. 4-2001 and Labor Code section 1198. Further, PAGA civil penalties are available for a violation of Labor Code section 1198 based on a failure to comply with the applicable wage order. (*Bright v. 99¢ Only Stores* (2010) 189 Cal.App.4th 1472.)

1           109. By virtue of Defendant's violation of the provisions of Labor Code section 1198,  
2 Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing violations  
3 incurring civil penalties, the amount of which are presently unknown, but will be ascertained  
4 according to proof at trial.

5           110. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved  
6 Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the  
7 initial violation and two hundred dollars (\$200.00) per pay period for each subsequent violation.

8           111. More than sixty-five (65) days have elapsed since Plaintiff provided notice to the  
9 LWDA, and the LWDA has indicated no intention to investigate. Further, Defendant has  
10 provided no cure notice, and has not taken any steps of corrective action to remedy the allegations  
11 set forth above. Accordingly, pursuant to Labor Code sections 2699 and 2699.3, Plaintiff,  
12 individually and on behalf of the Aggrieved Employees and the State of California, seeks penalties  
13 for violations of Labor Code section 1198 during the PAGA Period, in an amount according to  
14 proof, that would otherwise only be collected through public agency enforcement actions by the  
15 Labor Commission, the LWDA and/or the DLSE.

16           112. Plaintiff, as a personal representative of the general public, will and does seek to  
17 recover any and all penalties for each and every violation shown to exist or to have occurred  
18 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise  
19 only available to public agency enforcement actions. Funds recovered will be distributed in  
20 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered  
21 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all  
22 Aggrieved Employees.

23           113. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and  
24 costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

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1 initial violations and two hundred dollars (\$200.00) per pay period for each subsequent violation.

2 121. Pursuant to Labor Code section 203, subdivision (a), “[i]f an employer willfully  
3 fails to pay ... any wages of any employee who is discharged or who quits, the wages of the  
4 employee shall continue as a penalty from the due date thereof at the same rate until paid or until  
5 an action therefor is commenced; but the wages shall not continue for more than 30 days.” Labor  
6 Code section 256 provides for civil penalties not exceeding 30 days’ pay at the employees’ same  
7 rate of pay.

8 122. Since the LWDA has not indicated that it will be investigating more than sixty-  
9 five (65) days since Plaintiff provided notice, and because Defendant took no corrective action to  
10 remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of  
11 California, will seek any and all penalties otherwise capable of being collected by the Labor  
12 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in  
13 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any  
14 alleged violation of the following provisions: Labor Code sections 201 and 203.

15 123. Plaintiff, as a personal representative of the general public, will and does seek to  
16 recover any and all penalties for each and every violation shown to exist or to have occurred  
17 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise  
18 only available to public agency enforcement actions. Funds recovered will be distributed in  
19 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered  
20 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all  
21 Aggrieved Employees.

22 124. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and  
23 costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

## 24 **PRAYER FOR RELIEF**

25  
26 **WHEREFORE**, Plaintiff and Aggrieved Employees pray for judgment as follows:

- 27 1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee  
28 as provided by law, including, but not limited to, those civil penalties provided by

statute and provided by PAGA, and for unpaid wages;

2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis; and
4. For all such other and further relief as the Court may deem just and proper.

Dated: November 5 2021

**MAHONEY LAW GROUP, APC**

*L Theriault*

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Attorneys for Plaintiff CLAUDIA  
COLINDRES