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Assigned for all Purposes

Judge Peter Wilson

CX-102

7 Attorneys for LUZ M. ORDUNA,
on behalf of herself, the State of California, and others similarly
8 situated and aggrieved

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF ORANGE**

11 LUZ M. ORDUNA on behalf of herself, the
State of California, and others similarly
12 situated and aggrieved,

13 Plaintiff,

14 vs.

15
16 SUN-MAR HEALTH CARE, INC., a
California Corporation; PARK REGENCY
17 CARE, LLC, a California Limited Liability
Company; BARTLETT CARE CENTER,
18 LLC, a California Limited Liability
Company; GORDON LANE
19 HEALTHCARE, LLC, a California Limited
Liability Company; VILLA RANCHO
20 BERNARDO HEALTH CARE, LLC, a
California Limited Liability company;
21 GARDEN PARK CARE CENTER, LLC; a
California Limited Liability Company;
22 ANAHEIM HEALTHCARE CENTER,
LLC; a California Limited Liability
23 Company; INLAND MEDICAL

Case No.: 30-2021-01235479-CU-OE-CXC

**PLAINTIFF'S REPRESENTATIVE
COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LABOR CODE SECTIONS 2698, et
seq.**

1 ENTERPRISES, INC., a California
2 Corporation; and DOES 1 to 100, inclusive,

3 Defendants.

4 Plaintiff LUZ M. ORDUNA (“PLAINTIFF” or “PLAINTIFF ORDUNA”), an individual on
5 behalf of herself, the State of California, and all other Aggrieved Employees, hereby files this
6 Complaint against Defendants SUN-MAR HEALTH CARE, INC., a California Corporation; PARK
7 REGENCY CARE, LLC, a California Limited Liability Company; BARTLETT CARE CENTER,
8 LLC, a California Limited Liability Company; GORDON LANE HEALTHCARE, LLC, a
9 California Limited Liability Company; VILLA RANCHO BERNARDO HEALTH CARE, LLC, a
10 California Limited Liability Company; GARDEN PARK CARE CENTER, LLC; a California
11 Limited Liability Company; ANAHEIM HEALTHCARE CENTER, LLC; a California Limited
12 Liability Company; INLAND MEDICAL ENTERPRISES, INC., a California Corporation; and
13 DOES 1-100 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
14 believes, and on the basis of that information and belief, alleges as follows:

15 **JURISDICTION AND VENUE**

16 1. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
17 California statutes, including but not limited to the Private Attorneys General Act, and decisional
18 law and regulations.

19 2. Venue is proper in this judicial district and the County of Orange pursuant to
20 California Code of Civil Procedure section 395.5 because DEFENDANTS SUN-MAR HEALTH
21 CARE, INC., PARK REGENCY CARE, LLC, BARTLETT CARE CENTER, LLC, GORDON
22 LANE HEALTHCARE, LLC, VILLA RANCHO BERNARDO HEALTH CARE, LLC, GARDEN
23 PARK CARE CENTER, LLC, ANAHEIM HEALTHCARE CENTER, LLC, AND INLAND
MEDICAL ENTERPRISES, INC., each maintain its principal place of business in Brea, California,

1 in the county of Orange. Moreover, DEFENDANTS employed PLAINTIFF in La Habra, California
2 in the County of Orange, and the acts, omissions, and conduct alleged by PLAINTIFF herein
3 occurred in this county. *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th
4 1069 (venue in a PAGA action is proper in any county where the defendants committed Labor Code
5 violations against some of its employees).

6 **THE PARTIES**

7 3. DEFENDANTS are each either a California corporation or California limited
8 liability company, that at all relevant times, was authorized to do business within the State of
9 California and is doing business in the State of California.

10 4. DEFENDANTS and their managing agents, own, operate, or otherwise manage
11 skilled nursing facilities, assisted living facilities, and other health care facilities in California.

12 5. Defendant SUN-MAR HEALTH CARE, INC., is a long-term care organization for
13 over 20 skilled nursing and assisted living facilities, including but not limited to the facilities listed
14 below.

15 6. Defendant PARK REGENCY CARE, LLC, operates a 99-bed skilled nursing facility
16 in La Habra, California.

17 7. Defendant BARTLETT CARE CENTER, LLC, operates a 24-hour skilled nursing
18 facility in Santa Ana, California.

19 8. Defendant GORDON LANE HEALTHCARE, LLC, operates a 99-bed skilled
20 nursing facility in Fullerton, California.

21 9. Defendant VILLA RANCHO BERNARDO HEALTH CARE, LLC, operates a 299-
22 bed skilled nursing facility in San Diego, California.

23 10. Defendant GARDEN PARK CARE CENTER, LLC, operates a 124-bed skilled
nursing facility in Garden Grove, California.

11. Defendant ANAHEIM HEALTHCARE CENTER, LLC, operates a 250-bed skilled

1 nursing facility in Anaheim, California.

2 12. Defendant INLAND MEDICAL ENTERPRISES, INC., operates a 121-bed skilled
3 nursing facility in Los Angeles, California.

4 13. PLAINTIFF ORDUNA is, and at all relevant times was, an individual domiciled in
5 the State of California and a citizen of the State of California who worked as a non-exempt, hourly-
6 paid employee for DEFENDANTS in the State of California.

7 14. PLAINTIFF ORDUNA worked for DEFENDANTS from in or about 2014 through
8 in or about August 2021. PLAINTIFF worked as a caregiver at DEFENDANTS' Park Regency Care
9 Center in La Habra, California.

10 15. The true names and capacities of the DOE DEFENDANTS sued herein as DOES 1
11 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
12 DEFENDANTS by said fictitious names. Each of the DEFENDANTS designated herein as a DOE
13 is legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to
14 amend this Complaint to reflect the true names and capacities of the DOE DEFENDANTS when
15 such identities become known.

16 16. PLAINTIFF is further informed and believes that, at all relevant times, each
17 defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
18 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
19 predecessor in interest of some or all of the other DEFENDANTS, and was engaged with some or
20 all of the other DEFENDANTS in a joint enterprise for profit, and bore such other relationships to
21 some or all of the other DEFENDANTS so as to be liable for their conduct with respect to the
22 matters alleged in this Complaint. PLAINTIFF is further informed and believes and thereon alleges
23 that each defendant acted pursuant to and within the scope of the relationships alleged above, and
that at all relevant times, each defendant knew or should have known about, authorized, ratified,
adopted, approved, controlled, aided and abetted the conduct of all other DEFENDANTS.

1 17. At all relevant times, DEFENDANTS were and are legally responsible for all
2 unlawful conduct, policies, practices, acts and omissions complained of herein. Further,
3 DEFENDANTS are responsible for each of the unlawful acts or omissions complained of herein
4 under the doctrine of respondent superior. The conduct of DEFENDANTS' managers and
5 supervisors was at all relevant times undertaken as employees of DEFENDANTS, acting within the
6 scope of their employment or authority in all of the unlawful activities described herein.

7 **JOINT LIABILITY**

8 18. Under California law, the definition of the term "to employ" is broadly construed
9 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
10 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
11 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49
12 Cal.4th 35, 64 (2010). One reason that the IWC defined "employer" in terms of exercising control
13 was to reach situations in which multiple entities control different aspects of the employment
14 relationship. Supervision of the work, in the specific sense of exercising control over how services
15 are properly performed, is properly viewed as one of the "working conditions" mentioned in the
16 wage order. *Id.* at 76. A joint employer relationship exists when one entity hires and pays a worker,
and the other entity supervises the work. *Id.*

17 19. As such, California courts have recognized that the definition of "employer" for
18 purposes of enforcement of the California Labor Code goes beyond the concept of traditional
19 employment to reach irregular working arrangements for the purpose of preventing evasion and
20 subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. Therefore,
21 anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or
22 permits any person to work or exercises control over the wages, hours, or working conditions of any
person, may be liable for violations of the California Labor Code as to that person.

23 20. PLAINTIFF is informed and believes and thereon alleges that at all relevant times,

1 DEFENDANTS SUN-MAR HEALTH CARE, INC., PARK REGENCY CARE, LLC, BARTLETT
2 CARE CENTER, LLC, GORDON LANE HEALTHCARE, LLC, VILLA RANCHO BERNARDO
3 HEALTH CARE, LLC, GARDEN PARK CARE CENTER, LLC, ANAHEIM HEALTHCARE
4 CENTER, LLC, AND INLAND MEDICAL ENTERPRISES, INC., operated as a single integrated
5 enterprise with common ownership and centralized human resources as set forth herein. Under
6 California law, in determining whether two defendant entities are liable as an integrated enterprise,
7 courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations;
8 (3) common management; and (4) common ownership or financial control. *Laird v. Capital*
9 *Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.*
10 (2010) 50 Cal. 4th 512 (2010).)

11 21. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS SUN-
12 MAR HEALTH CARE, INC., PARK REGENCY CARE, LLC, BARTLETT CARE CENTER,
13 LLC, GORDON LANE HEALTHCARE, LLC, VILLA RANCHO BERNARDO HEALTH CARE,
14 LLC, GARDEN PARK CARE CENTER, LLC, ANAHEIM HEALTHCARE CENTER, LLC,
15 AND INLAND MEDICAL ENTERPRISES, INC., and each of them, are owned and operated by
16 the same individuals, including but not limited to, Irving Bauman and William Presnell, and share
17 the same headquarters/principal place of business/principal executive office at 3050 Saturn St. #201,
18 Brea, California 92821, and share the same general managers and human resources
19 department/personnel. As a result, SUN-MAR HEALTH CARE, INC., PARK REGENCY CARE,
20 LLC, BARTLETT CARE CENTER, LLC, GORDON LANE HEALTHCARE, LLC, VILLA
21 RANCHO BERNARDO HEALTH CARE, LLC, GARDEN PARK CARE CENTER, LLC,
22 ANAHEIM HEALTHCARE CENTER, LLC, AND INLAND MEDICAL ENTERPRISES, INC.,
23 utilized the same unlawful policies and practices, such as but not limited to, those pertaining to
payment of minimum wages, overtime wages, sick leave wages, time record-keeping, provision of
wage statements, timely provision of final pay, meal and rest periods, business expense

1 reimbursement, and other unlawful financial and criminal inquiries in violation of California law.

2 22. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS
3 must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties
4 under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to
5 perform services from which they benefited, and furthermore that the aforementioned entities had
6 the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all
7 relevant times herein, so as to be considered the joint employers of PLAINTIFF.

8 23. By reason of their status as joint employers of PLAINTIFF and Aggrieved
9 Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor
10 Code and applicable Wage Orders as to PLAINTIFF and other Aggrieved Employees.

11 **PAGA ALLEGATIONS**

12 24. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
13 Labor Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of herself, the
14 State of California and Aggrieved Employees, regarding violations of the California Labor Code as
set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

15 All current and former non-exempt employees that worked either directly
16 or via a staffing agency for any of the DEFENDANTS in California at
17 any time from one year plus 65 days from filing of the initial Complaint
18 through the present (“PAGA Period”).

19 25. PLAINTIFF ORDUNA is an “aggrieved employee,” as that term is defined under
20 Labor Code section 2699(c), as she was employed by DEFENDANTS during the applicable
21 statutory limitations period and suffered one or more of the Labor Code violations set forth herein.
22 Accordingly, PLAINTIFF seeks to recover on behalf of herself, the State of California, and all other
23 Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and
costs. PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all

1 Aggrieved Employees, as she was jointly employed by DEFENDANTS and is thereby affected by
2 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
3 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
4 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
5 *Id.* at 760-761.

6 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

7 26. On September 28, 2021, PLAINTIFF ORDUNA, through her counsel, gave written
8 notice by online filing with the California Labor and Workforce Development Agency (“LWDA”)
9 informing it that DEFENDANTS failed to comply with California’s labor laws with regard to the
10 allegations alleged in this Complaint (“PAGA Letter”). Attached hereto as **Exhibit 1** is a true and
11 correct copy of the PAGA Letter also sent to DEFENDANTS at the offices of their Agents for
12 Service of Process via certified mail.

13 27. The PAGA Letter outlined PLAINTIFF’s claims for violations of the California
14 Labor Code and the applicable wage orders on behalf of herself, the State of California and other
15 Aggrieved Employees.

16 28. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
17 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
18 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
19 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
20 section 2699.3. Consequently, PLAINTIFF’s right to file the instant lawsuit has duly accrued.

21 29. As such, PLAINTIFF seeks to recover the PAGA civil penalties through a
22 representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior*
23 *Court* (2009) 46 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

FACTUAL ALLEGATIONS

30. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were

1 employed by DEFENDANTS in the State of California as non-exempt employees. DEFENDANTS,
2 at all times, exercised control over PLAINTIFF and each of the Aggrieved Employees, and suffered
3 and/or permitted them to work.

4 31. PLAINTIFF worked as a caregiver at DEFENDANTS' Park Regency Care Center,
5 located in La Habra, California, from in or about 2014 until PLAINTIFF resigned from her position
6 in or around early August 2021. PLAINTIFF's last date worked was on or about August 8, 2021.
7 DEFENDANTS' records indicate that PLAINTIFF's end of employment was, at the latest, on August
8 18, 2021.

9 32. PLAINTIFF and the Aggrieved Employees were full time non-exempt employees
10 that worked at DEFENDANTS' facilities. PLAINTIFF was paid hourly and typically worked
11 approximately seven (7) to sixteen (16) hours per day, two (2) to five (5) days a week. PLAINTIFF
12 regularly worked the night shift, but at times, also worked the morning and/or afternoon shift.

13 33. **Meal Periods.** PLAINTIFF and the Aggrieved Employees regularly worked shifts
14 of five and one half (5 ½) hours or more and were entitled to at least one thirty-minute uninterrupted
15 meal break. However, PLAINTIFF and the Aggrieved Employees did not receive a thirty-minute
16 meal break or were required to work through purported meal breaks. PLAINTIFF and other
17 Aggrieved Employees were consistently unable to take timely, off duty, thirty-minute, uninterrupted
18 meal periods, often being forced to take late meal periods (i.e. after the fifth hour of work) and/or
19 work through part or all their meal periods due to the nature and constraints of their job duties and
20 or commentary from supervisors pressuring them to take non-compliant breaks or skip breaks
21 completely. Per DEFENDANTS' unlawful practice and/or policy, PLAINTIFF and similarly
22 Aggrieved Employees were instructed by their supervisors to clock out for meal periods but to
23 continue working due to lack of coverage/lack of relief workers available.

34. DEFENDANTS further implemented policies and practices that failed to relieve
PLAINTIFF and other Aggrieved Employees of all duties and DEFENDANTS' control during

1 unpaid meal breaks. For example, PLAINTIFF was required to remain available to assist patients
2 during her purported meal periods. As a result, PLAINTIFF often took her meal period on premises,
3 or at the front desk in order to manage any incoming calls, receive medications, or remain available
4 in the event a patient needed assistance.

5 35. DEFENDANTS also implemented a policy and practice of automatically
6 deducting/requiring PLAINTIFF and other Aggrieved Employees to clock out at least thirty minutes
7 per shift for these missed/improper meal periods, despite having actual and/or constructive
8 knowledge that PLAINTIFF and other Aggrieved Employees did not receive compliant meal
9 periods.

10 36. Based on further information and belief, DEFENDANTS rounded the start and end
11 times of Aggrieved Employees' meal periods resulting in PLAINTIFF and other Aggrieved
12 Employees not being paid for all time worked as well as late or shortened meal periods.

13 37. PLAINTIFF is further informed and believes and thereon alleges that
14 DEFENDANTS had actual and/or constructive knowledge that its time-rounding and auto-
15 deduction policies and practices resulted in the denial of lawful meal periods owed to PLAINTIFF
16 and other Aggrieved Employees, in violation of California's meal period laws.

17 38. Based on information and belief, DEFENDANTS did not have a lawful written meal
18 break policy, nor did DEFENDANTS have any sort of compliant policy in practice.

19 39. Moreover, DEFENDANTS failed to pay PLAINTIF and other Aggrieved Employees
20 an additional hour of wages at their respective regular rates of pay for each workday a proper meal
21 period was not provided, as required by California law. *Brinker, supra*, 53 Cal.4th 1004. As such,
22 DEFENDANTS failed to pay a meal period premium at all for each workday a lawful meal period
23 was not provided, and even if and when a meal premium was paid, DEFENDANTS failed to pay
the proper meal period premium for failure to incorporate all non-discretionary remuneration,
including but not limited to, non-discretionary bonus pay and/or shift differential pay into the regular

1 rate for purposes of calculating the owed meal period premium at the correct regular rate. For
2 example, PLAINTIFF's wage statement with a check date of 07/09/21 has a year to date "Meal
3 Penalty" payment of \$41.32 for 3 hours, which amounts to less than PLAINTIFF's base hourly rate
4 of \$14.00 per hour and consequently, also fails to include all non-discretionary remuneration earned
5 during the relevant period.

6 40. **Rest Breaks.** DEFENDANTS maintained a consistent policy and/or practice of
7 requiring PLAINTIFF and the Aggrieved Employees to work over four (4) hours, or a major fraction
8 thereof, without a ten (10) minute rest period and failed to pay such employees one (1) hour of pay
9 at the employees' regular rate of compensation for each workday that an uninterrupted rest period
10 was not provided, as required by California law.

11 41. DEFENDANTS did not properly authorize or permit PLAINTIFF and other
12 Aggrieved Employees to take lawful rest periods at a rate of every four (4) hours worked or major
13 fraction thereof.

14 42. Per DEFENDANTS' unlawful rest policy and/or practice, PLAINTIFF and other
15 Aggrieved Employees were not adequately informed, authorized, instructed about, nor permitted an
16 opportunity to take proper rest breaks.

17 43. Any purported rest periods were interrupted, cut short, on duty, and or late due to the
18 nature and constraints of PLAINTIFF and other Aggrieved Employees' job duties and/or
19 commentary from supervisors pressuring them to skip rest breaks completely or take non-compliant
20 rest breaks. Moreover, PLAINTIFF and similarly Aggrieved Employees were instructed by their
21 supervisors to work through their rest periods due to lack of coverage and/or lack of relief workers
22 available.

23 44. PLAINTIFF and other Aggrieved Employees were pressured to complete their work
duties according to a designated schedule such that rest breaks were only taken once jobs were
completed/if time permitted. Moreover, PLAINTIFF and Aggrieved Employees were required to be

1 available during purported rest breaks in order to provide assistance to a patient and/or attend to
2 other job duties.

3 45. Based in information and belief, DEFENDANTS did not have a lawful policy,
4 instruction, or practice as to the taking, timing, or duty-free nature of rest periods.

5 46. Despite not providing lawful rest periods during the PAGA Period, DEFENDANTS
6 failed to pay PLAINTIFF and other Aggrieved employees with an additional hour of pay at
7 PLAINTIFF's and other Aggrieved Employees' regular rates of compensation for each missed, or
8 otherwise unlawful rest period.

9 47. By failing to provide rest periods for every four (4) hours or major fraction thereof,
10 and by failing to provide compensation for these missed or unlawful rest periods, DEFENDANTS
11 willfully violated the provisions of Labor Code section 226.7.

12 48. **Unpaid Wages.** DEFENDANTS failed to compensate all hours worked, including
13 all owed minimum and overtime wages. As explained above, PLAINTIFF and the Aggrieved
14 Employees were regularly required to perform off-the-clock work by virtue of DEFENDANTS'
15 automatic-deduction policy for meal periods. On information and belief, the work time reported by
16 Aggrieved Employees was rounded and automatically deducted for at least 30 minutes of wages
17 every day they worked for DEFENDANTS for meal breaks not taken, interrupted, or not relieved
18 of all duties and employer control. Per DEFENDANTS' policies and practices, PLAINTIFF and
19 Aggrieved Employees were required to clock out for at least thirty minutes per shift for purported
20 meal periods, despite DEFENDANTS' actual and/or constructive knowledge that PLAINTIFF and
21 other Aggrieved Employees were working through part or all these meal periods.

22 49. Based on further information and belief, DEFENDANTS rounded the start and end
23 times of Aggrieved Employees' meal periods and shift start and end times resulting in PLAINTIFF
and other Aggrieved Employees not being paid for all time worked.

50. DEFENDANTS' automatic deduction and time rounding policies and practices

1 described herein resulted in a failure to account for all hours worked and deprived PLAINTIFF and
2 Aggrieved Employees of all owed minimum and overtime wages for those that worked more than
3 eight (8) hours in a day or more than forty (40) hours in a week.

4 51. Based on information and belief, DEFENDANTS also failed to pay the correct
5 overtime rate to Aggrieved Employees due to DEFENDANTS' failure to incorporate all forms of
6 non-discretionary compensation, including but not limited to, shift differential pay and/or non-
7 discretionary bonus pay, into the regular rate of pay for purposes of calculating the owed overtime
8 rate, resulting in the underpayment of overtime wages owed. For example, PLAINTIFF and other
9 Aggrieved Employees received non-discretionary compensation, including but not limited to
10 additional compensation when working with patients that tested positive for COVID-19.
11 PLAINTIFF received an additional \$3 for each hour worked with such patients. However,
12 DEFENDANTS failed to include this compensation and all non-discretionary pay into
13 PLAINTIFF's regular rate of pay.

14 52. Based on information and belief, DEFENDANTS had actual and/or constructive
15 knowledge that its time-rounding and auto-deduction policies and practices and failure to provide
16 off-duty meal periods resulted in violations of California's minimum and overtime wage laws and
17 other violations described below.

18 53. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
19 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
20 required by Labor Code section 1174, 1198, 1199, and the applicable Wage Order, including Wage
21 Order 5-2001, section 7. DEFENDANTS have failed and continue to fail to keep accurate and
22 complete records showing total hours worked by virtue of DEFENDANTS' automatic meal break
23 deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and employer
control during unpaid meal periods, time rounding policies and practices, and failure to record the
true start and end times of PLAINTIFF and Aggrieved Employees' meal periods and shift start and

1 end times.

2 54. **Standard Conditions of Labor violations.** DEFENDANTS unlawful policies and
3 practices described herein also resulted in violations of Labor Code Sections 1198 and 1199, which
4 together, make it unlawful to employ individuals under conditions that are prohibited by the Wage
5 Orders or any provision within Part 4, Chapter 1 of the Labor Code, including section 1174, 1197,
6 and 1198, or order or ruling of the commission.

7 55. **Refusal to Make Payment:** DEFENDANTS violated/continue to violate Labor
8 Code section 216 by failing to pay Aggrieved Employees for all hours worked at the proper wage
9 rate and by failing to pay aggrieved employees an additional hour of pay for each meal/rest period
10 not provided/ that is invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137,
11 1154-1155.

12 56. **Statutory Wage Violations:** As described above, DEFENDANTS willfully and
13 systematically denied PLAINTIFF and other Aggrieved Employees minimum wage and overtime
14 compensation for all hours worked which resulted in the payment of less than the statutorily required
15 wages owed to them. DEFENDANTS acted with the intent to deprive them of statutory wages,
16 including, but not limited to, overtime wages and minimum wages, to which they were entitled to
17 under California law. Thus, DEFENDANTS violated Labor Code section 223 by paying
18 PLAINTIFF and other Aggrieved Employees lower wages than those they were entitled to while
19 purporting that PLAINTIFF and other Aggrieved Employees were properly paid.

20 57. **Unreimbursed Business Expenses.** DEFENDANTS also failed to compensate
21 PLAINTIFF and the Aggrieved Employees for business-related expenses incurred in direct
22 consequence of the discharge of their duties or of their obedience to the directions of the employer.
23 Based on information and belief, PLAINTIFF and the Aggrieved Employees were improperly
required to provide and maintain work tools that are supposed to be the responsibility of the
employer. Based on information and belief, DEFENDANTS shifted its costs of doing business onto

1 PLAINTIFF and other Aggrieved Employees by requiring them to pay for its business expenses,
2 including but not limited to, use of PLAINTIFF's and Aggrieved Employees' mobile phone, data
3 plan usage and charges, and costs associated with the maintenance and/or purchase of uniforms/
4 work clothing and shoes. For example, PLAINTIFF and Aggrieved employees regularly received
5 phone calls or text messages to their personal phone from their managers or supervisors. Moreover,
6 DEFENDANTS required PLAINTIFF and Aggrieved Employees to download an application on
7 their personal phone for payroll purposes, including but not limited to requesting paid time off.

8 58. DEFENDANTS' failure to provide PLAINTIFF and other AGGRIEVED
9 EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out
10 their duties required that PLAINTIFF and other Aggrieved Employees subsidize and/or carry the
11 burden of business expenses in violation of Labor Code section 2802.

12 59. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
13 provide PLAINTIFF and the Aggrieved Employees with accurate wage statements that complied
14 with Labor Code section 226. DEFENDANTS provided wage statements that failed to indicate the
15 total hours worked by PLAINTIFF and the Aggrieved Employees (by virtue of the automatic
16 deduction for meal and time-rounding policies and practices). The wage statements also failed to
17 include any sick leave pay or fail to include all accrued sick leave. Accordingly, DEFENDANTS
18 violated Labor Code § 226 by providing wage statements that were inaccurate and failed to include
19 all of the statutorily required information.

20 60. **Sick Leave.** Throughout the relevant time period, DEFENDANTS either failed to
21 provide paid sick leave to PLAINTIFF and other Aggrieved Employees or failed to properly accrue
22 all owed sick leave, due to, including but not limited to, DEFENDANT's failure to account for
23 actual hours worked (by virtue of DEFENDANTS' meal period auto-deduction and time rounding
practices, as described herein) and/or failure to incorporate all forms of non-discretionary
remuneration, including but not limited to, non-discretionary bonus pay and/or shift differential pay,

1 into the sick pay calculation.

2 61. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
3 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
4 entitlement to sick leave in a Labor Code section 2810.5 notice. Additionally, DEFENDANTS failed
5 to maintain accurate records of hours worked, paid sick days accrued, used sick leave, and the
6 balance of paid sick leave left to the employee throughout the relevant time period.

7 62. Throughout the relevant time period, DEFENDANTS also failed to provide notice
8 of the balance of sick leave pay left for PLAINTIFF and all Aggrieved Employees, thus affecting
9 their intelligent exercise of their paid sick leave. DEFENDANTS further violated Labor Code
10 section 246 by failing to provide a wage statement, or separate writing containing the amount of
11 paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the
12 time it pays wages. For example, PLAINTIFF's wage statements fail to indicate the balance of
13 accrued or available sick leave and/or paid time off provided in lieu of sick leave.

14 63. But for this failure, PLAINTIFF and all Aggrieved Employees would have used their
15 paid sick leave at least prior to their respective separations, for as on several occasions thereafter,
16 he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

17 64. As such, DEFENDANTS unlawfully retained and continue to retain paid sick leave
18 that should have been paid and was not as a result of their failure to properly institute a lawful paid
19 sick leave program. These unlawful practices and policies violate California's sick leave laws, Labor
20 Code section 245 *et. seq.*, 246, and 247.5.

21 65. **Waiting Time.** DEFENDANTS failed to timely pay PLAINTIFF and other
22 Aggrieved Employees all wages that were due and owing upon termination or resignation. Labor
23 Code sections 201 and 202, together require employers to pay all wages immediately upon discharge
and within 72 hours of an employees' resignation. Upon separation of employment, PLAINTIFF's
and other Aggrieved Employees' final paychecks were not timely provided. For example,

1 PLAINTIFF provided notice of her resignation in or about early August 2021. PLAINTIFF's last
2 date worked was August 8, 2021. DEFENDANTS' records indicate that her employment ended (at
3 the latest) on August 18, 2021. Yet, PLAINTIFF's final paychecks are dated August 23, 2021, and
4 August 25, 2021, well over 3 days from the date of resignation.

5 66. Moreover, PLAINTIFF's and Aggrieved Employees' final paychecks, once
6 provided, did not include all wages owed as they were devoid of, including but not limited to, all
7 owed minimum wages, overtime wages, premium wages for unlawful meal and rest breaks, vacation
8 pay, and/or all owed sick leave at the properly accrued rates.

9 67. These violations subject DEFENDANTS to civil penalties under Labor Code section
10 203, 210, and/or 256.

11 68. **Background Checks.** In addition to the above requirements, the California Labor
12 Code places certain procedural and substantive limits on employers' ability to conduct employee
13 background checks and on how employers can use the information they obtain through these
14 background checks. Labor Code Section 1024.5 states that employers, except for financial
15 institutions, may order a credit check only if the individual works (or is applying to work) in certain
16 positions (e.g., managerial positions, financially-related positions, and certain government
17 positions). Labor Code Section 432.7 prohibits an employer from asking applicants about past
18 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Additionally,
19 the Investigative Consumer Reporting Agencies Act, Civil Code §§ 1786, *et seq.* ("ICRAA"), and
20 the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.* ("FCRA"), mandate several requirements
21 prior to and following an employee background check, including but not limited to, identifying an
22 appropriate reason for the background check, a separate consent form with required disclosures and
23 certain formatting requirements, additional forms such as a summary of rights, as well as proper
notice of adverse actions taken, among other statutory requirements.

69. Based on information and belief, DEFENDANTS required PLAINTIFF and all

1 Aggrieved Employees to submit to an unlawful criminal and/or financial background check as a
2 condition of obtaining and/or holding employment in violation of Labor Code section 1024.5 and
3 432.7. Furthermore, based on information and belief, DEFENDANTS asked about arrests not
4 resulting in convictions on its employment application, in violation of California law.

5 70. Based on information and belief, DEFENDANTS also required PLAINTIFF and
6 other Aggrieved Employees to agree in writing to a background check which failed to abide by the
7 requirements set forth in California Civil Code section 1786, *et. seq.*, and 15 U.S.C. section 1681,
8 *et. seq.*, and thus was an unlawful background check. Based on further information and belief,
9 DEFENDANTS failed to comply with Cal. Civ. Code section 1786, *et. seq.*, and/or 15 U.S.C.
10 section 1681 in various ways including but not limited to failing to provide disclosures, and/or
11 providing inaccurate information in such disclosures, and/or providing disclosures that were not
12 clear and conspicuous, and/or requiring PLAINTIFF and Aggrieved Employees to sign a liability
13 waiver that released DEFENDANTS from any liability that may result from the furnishing or
reliance on the information contained in the background check report.

14 71. Based on further information and belief, DEFENDANTS knew that requiring
15 PLAINTIFF and Aggrieved Employees to agree to these criminal and/or financial background
16 checks as a condition of obtaining and/or holding employment was unlawful.

17 72. By having PLAINTIFF and other Aggrieved Employees sign off on the same or
18 similarly illegal background checks, DEFENDANTS also violated Labor Code section 432.5
19 (stating that “no employer... shall require any employee or applicant for employment to agree, in
20 writing, to any term or condition which is known by such employer... to be prohibited by law.”)

21 73. These violations subject DEFENDANTS to civil penalties under the Labor Code
22 including without limitation, sections 432.5, 432.7, and 2699.

23 74. Each violation of each Labor Code section and Wage Order provision results in a
separate civil penalty for PLAINTIFF and each Aggrieved Employee.

1 75. PLAINTIFF is informed and believes that DEFENDANTS engaged in these same
2 herein described unlawful practices with regard to all of the Aggrieved Employees.

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**

5 **2698, *ET SEQ.***

6 **(On behalf of Plaintiff, Aggrieved Employees, and the State of California against all**
7 **Defendants)**

8 76. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

9 **Failure to Keep Accurate Records**

10 77. California Labor Code § 1174 requires employers to keep “accurate and complete”
11 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
12 IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), § 7 similarly requires employers
13 to keep time records reflecting the times during which all owed meal periods were provided each
14 day.

15 78. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
16 and complete records as required by law. Upon information and belief, DEFENDANTS knowingly
17 and intentionally failed to maintain records as required under California Labor Code §§ 226 and
18 1174, and IWC Wage Order No. 5-2001, § 7, including but not limited to the following records:
19 total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and
20 other Aggrieved Employees began and ended each work period, time records of meal periods, and
21 accurate itemized wage statements.

22 79. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
23 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and Wage
Order 5-2001 (and all applicable IWC Orders), § 7. These violations subject DEFENDANTS to
civil penalties under Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor

1 Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved
2 employee for each pay period during which the referenced statutes and Wage Order provisions
3 were violated.¹

4 **Meal Period Violations**

5 80. California law requires employers to provide employees a duty-free, uninterrupted
6 thirty (30) minute meal period when an employee works more than five (5) hours in a workday,
7 and it must be provided within the first five (5) hours the employee works. Lab. Code § 512; IWC
8 Wage Order 5-2001 (and all applicable wage orders), § 11(A) and (C); *Brinker Restaurant Corp.*
9 *v. Superior Court* (2012) 53 Cal.4th 1004.

10 81. Employers must also provide employees with a second duty-free, uninterrupted thirty
11 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
12 be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
13 under the following circumstances: (1) if an employee's total work period in a day is over five (5)
14 hours but no more than six (6) hours, the required meal period may be waived by mutual consent
15 of the employer and employee, and (2) if an employee's total work period in a day is over ten (10)
16 hours but no more than twelve (12) hours, the required second meal period may be waived by
17 mutual consent of the employer and employee, but only if the first meal period was not waived.

18 *Ibid.*

19 82. Liability for the aggrieved employees can be established by evidence that an
20 employer adopted a uniform corporate break policy that failed to give full effect to California law

21 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
22 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
23 employee was underpaid”); IWC Wage Order 1-2001 (and all applicable wage orders), § 20 (establishing that “[i]n
addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the
employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for
each underpaid employee for each pay period during which the employee was underpaid”) (emphasis added).

1 and the applicable Wage Order requirements. The fact that employees may legally waive meal
2 breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004. Upon information and belief,
3 PLAINTIFF did not sign a valid meal period waiver at any time during her employment with
4 DEFENDANTS.

5 83. Employers covered by any and all applicable IWC Wage Orders have an obligation
6 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
7 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
8 presumed that no meal period was provided. IWC Wage Order 5-2001, §7(A)(3) (“Meal periods .
9 . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing §7(A)(3) (“If an
10 employer’s records show no meal period for a given shift over five hours, a rebuttable presumption
11 arises that the employee was not relieved of duty and no meal period was provided”).

12 84. Employers must pay employees an additional hour of wages at the employees’
13 regular rate of compensation for each missed or improper meal period (e.g., less than 30 minutes,
14 interrupted meal period, first meal period provided after five (5) hours, second meal period
15 provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an
16 employer fails to provide an employee a meal period in accordance with the applicable provisions
17 of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular
18 rate of compensation for each workday that the meal period is not provided”); *Brinker, supra*, 53
19 Cal.4th 1004.

20 85. Upon information and belief, PLAINTIFF and the Aggrieved Employees regularly
21 worked periods of more than five hours in a workday without being provided an uninterrupted,
22 thirty-minute, duty-free meal period.

23 86. DEFENDANTS have a consistent policy and/or practice of not providing lawful
meal periods to PLAINTIFF and all Aggrieved Employees and/or providing compensation in lieu
thereof. Due to the assigned work schedule, nature and constraints of their job duties, and/or

1 commentary from supervisors pressuring PLAINTIFF and Aggrieved Employees to take late, non-
2 complaint meal periods or skip them completely, PLAINTIFF and Aggrieved Employees took their
3 meal periods after the end of the fifth hour of work, were interrupted, and/or were not relieved of
4 all duties during meal periods or were required to skip meal periods completely. Despite this,
5 PLAINTIFF and Aggrieved employees were instructed to clock out for meal periods but to
6 continue working due to a lack of relief workers available. Moreover, based on information and
7 belief, DEFENDANTS rounded the start and end time of employees' meal periods and/or
8 automatically deducted thirty minutes per shift despite having actual and/or constructive
9 knowledge that PLAINTIFF and Aggrieved Employees did not receive compliant meal periods.

10 87. Despite not providing PLAINTIFF and other Aggrieved Employees with the meal
11 breaks to which they were legally entitled, DEFENDANTS did not pay premiums for these missed
12 meal breaks in violation of California law or failed to pay the proper meal period premium for
13 failure to incorporate all non-discretionary remuneration for purposes of calculating the owed meal
14 period premium. Such non-discretionary remuneration includes but is not limited to, non-
15 discretionary bonus pay and/or shift differential pay, and/or any other non-discretionary
16 compensation, including but not limited to additional compensation earned when working with
17 patients that tested positive for COVID-19.

18 88. These unlawful meal period policies and practices result in violations of Labor Code
19 sections 226.7, 512, and 1198-1199, and IWC Wage Order 5-2001 (and all applicable wage orders),
20 § 11. These violations subject DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1
21 and 2699, and Wage Order 5-2001 (and all applicable wage orders), § 20. These practices result
22 in further violations such as violations of Labor Code § 1174 as discussed above, and other
23 violations discussed below.

Rest Period Violations

89. California law requires employers to provide employees a paid, duty-free ten (10)

1 minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC
2 Wage Order, §12(A). Employers must pay employees an additional hour of wages at the
3 employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes,
4 interrupted rest period, rest period(s) at improper time(s) during shift(s)). Lab. Code §226.7;
5 applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in
6 accordance with the applicable provisions of this order, the employer shall pay the employee one
7 (1) hour of pay at the employee's regular rate of compensation for each work day that the rest
8 period is not provided").

9 90. The rest period requirement obligates employers to permit and authorize employees
10 to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
11 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
12 Cal.5th 257, 269.

13 91. At all times mentioned herein, DEFENDANTS knew and/or should have known that
14 PLAINTIFF and the Aggrieved Employees were entitled to be authorized and/or permitted to take
15 legally compliant rest periods in a timely manner or payment of one hour of pay as additional
16 compensation at PLAINTIFF's and the Aggrieved Employees' regular rate of compensation when
17 they were not authorized and/or permitted to take a legally compliant rest period.

18 92. As explained above, DEFENDANTS did not properly authorize and permit
19 PLAINTIFF and other Aggrieved Employees to take lawful rest periods and any purported rest
20 periods were interrupted, cut short, on duty, and/or late due to the nature and constraints of job
21 duties, pressure to complete work prior to taking a rest break, lack of coverage and/or lack of
22 available relief workers, and/or commentary from supervisors pressuring PLAINTIFF and
23 Aggrieved Employees to skip rest breaks completely or otherwise take non-compliant rest breaks.

93. Despite not providing lawful rest breaks during the relevant time period,
DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees with an additional hour

1 of pay at PLAINTIFF's and other Aggrieved Employees' regular rates of compensation for each
2 missed or improper rest period. DEFENDANTS also failed to pay the proper rest period premium
3 for failure to incorporate all non-discretionary remuneration into the regular rate of compensation
4 for purposes of calculating the owed rest period premium. Such non-discretionary remuneration
5 includes but not limited to, non-discretionary bonus pay and/or shift differential pay, and/or any
6 other non-discretionary payment including but not limited to additional compensation earned when
7 working with patients that tested positive for COVID-19.

8 94. As such, DEFENDANTS willfully violated Labor Code sections 226.7, 512, and
9 1198-1199, and IWC Wage Order 5-2001, §12. These violations subject DEFENDANTS to civil
10 penalties under Labor Code §§ 558 and 2699, and Wage Order 1-2001, §20.

11 **Minimum and Overtime Wage Violations**

12 95. California law provides that employees in California must be paid for all hours
13 worked, up to 40 per week or 8 per day, at a regular rate that is no less than the mandated minimum
14 wage. *See* Labor Code section 1197 and the applicable wage order. The minimum wage standard
15 applies to each hour employees worked for which they were not paid. Therefore, an employer's
16 failure to pay for any particular hour worked by an employee is unlawful even if averaging an
17 employee's total pay over all hours worked, paid or not, results in an average hourly wage above
18 minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

19 96. California law also provides that employees in California must be paid overtime,
20 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 per week
21 or 8 per day and must be paid double wages for all hours worked in excess of 12 hours per day. *See*
22 Labor Code 510 and the applicable Wage Order section 3. Employers must pay overtime equal to
23 double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday
and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a
work week. *Ibid.*

1 97. As alleged herein, PLAINTIFF and the Aggrieved Employees regularly worked
2 minimum and overtime hours for which they were not compensated as required by California law.
3 DEFENDANTS' automatic time deduction for meal periods, time rounding policies, failure to
4 accurately record all hours worked, and failure to relieve employees of all duties during purported
5 meal periods resulted in unpaid minimum wages, and unpaid overtime wages for those Aggrieved
6 Employees that worked more than eight (8) hours in a day or more than forty hours (40) in a week.

7 98. Moreover, DEFENDANTS failed to pay proper overtime rates to PLAINTIFF and
8 Aggrieved Employees for their failure to incorporate all forms of non-discretionary compensation,
9 including but not limited to, shift differential pay and/or non-discretionary bonus pay, into the
10 regular rate of compensation for purposes of calculating the owed overtime rate resulting in the
11 underpayment of overtime wages owed. For example, additional compensation that PLAINTIFF
12 and Aggrieved Employees received when working with COVID-19 patients was not factored into
the regular rate of pay.

13 99. Based on information and belief, DEFENDANTS had actual or constructive
14 knowledge that its unlawful policies and practices, including but not limited to time-rounding and
15 auto-deduction policies/practices and failure to provide off-duty meal periods resulted in the
16 underpayment of minimum wages and overtime wages owed to PLAINTIFF and other Aggrieved
17 Employees, in violation of California's minimum and overtime wage laws.

18 100. These violations subject DEFENDANTS to civil penalties under Labor Code
19 sections 558, 558.1, 218.5, 1197.1, 2699, and Wage Order 5-2001 (and all applicable IWC Wage
20 Orders).

21 **Statutory Wage Violations**

22 101. California Labor Code section 223 makes it unlawful for an employer to secretly pay
23 wages lower than required by statute while purporting to pay legal wages. As described above,
DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all

1 earned minimum and overtime compensation for all hours worked which resulted in the payment
2 of less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
3 statutory wages, including, but not limited to, overtime wages and minimum wages, to which they
4 were entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other
5 Aggrieved Employees lower wages than those they were entitled to while purporting that
6 PLAINTIFF and other Aggrieved Employees were properly paid. As a result, PLAINTIFF and
7 other Aggrieved Employees are entitled to recover penalties, attorney's fees, costs, and interest
8 thereon, pursuant to Labor Code § 2699(f)-(g).

9 **Refusal to Make Payment**

10 102. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
11 and payable and/or denial of the validity of any claim to wages due. DEFENDANTS violated/
12 continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
13 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
14 meal/rest period not provided/that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995)
15 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil penalties under
16 Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each Aggrieved
Employee, for each pay period during which the statute provisions were violated.²

17 **Business Expense Violations**

18 103. California law requires employers to indemnify their employees for all necessary
19 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
20 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
21 Wage Orders including Wage Order 5-2001, § 9(b). Furthermore, "for purposes of [section 2802],

22 ² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
23 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not
2 limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

3 104. Among other things, under California law, when tools or equipment are required by
4 the employer or are necessary to the performance of a job, such tools and equipment shall be
5 provided and maintained by the employer, except that an employee whose wages are at least two
6 (2) times the minimum wage provided herein may be required to provide and maintain hand tools
7 and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, section
8 9 (b).

9 105. Among other things, under California law, when employees must use their personal
10 cellphones for work-related purposes, the employer must reimburse them for a reasonable
11 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
12 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
13 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
14 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
15 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
16 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further,
17 “any contract or agreement, express or implied, made by any employee to waive the benefits of
18 this article or any part thereof, is null and void, and this article shall not deprive any employee or
19 his personal representative of any right or remedy to which he is entitled to under the laws of this
20 State.” *See* Cal. Lab. Code section 2804.

21 106. As a pattern and practice, DEFENDANTS regularly failed to reimburse and
22 indemnify PLAINTIFF and other Aggrieved Employees for business expenses, including but not
23 limited to cell phone use, cell phone plans and charges, and costs incurred in the purchase and
maintenance of uniforms such as work clothing and shoes.

107. Despite being aware of these business expenses, DEFENDANTS failed to reimburse

1 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
2 Code § 2802. In turn, there constitutes a PAGA violation based on a violation of California Labor
3 Code § 2802 and the applicable Wage Order.

4 **Wage Statement Violations**

5 108. California law requires every employer semi-monthly or at the time of each payment
6 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
7 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
8 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
9 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
10 is paid; (7) the name of the employee and only the last four digits of his or her social security
11 number or an employee identification number other than a social security number; (8) the name
12 and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect
13 during the pay period and the corresponding number of hours worked at each hourly rate. Lab.
Code § 226.

14 109. Labor Code § 226(a) requires DEFENDANTS to accurately report PLAINTIFF's
15 and the Aggrieved Employee's total hours worked. Yet, each wage statement DEFENDANTS
16 provided to PLAINTIFF and the Aggrieved Employees failed to accurately itemize, in violation of
17 Labor Code § 226(a), PLAINTIFF's and the Aggrieved Employees' total hours worked (due to
18 DEFENDANTS' time rounding, interrupted meal periods, and automatic time deduction for
19 purported meal periods).

20 110. As a result of DEFENDANTS' violations of various Labor Code and Wage Order
21 provisions, as discussed herein, DEFENDANTS failed to provide accurate wage statements with
22 respect to multiple categories set forth in Labor Code section 226, causing confusion to
23 PLAINTIFF and Aggrieved Employees over whether they received all wages owed to them.
PLAINTIFF and Aggrieved Employees were injured by DEFENDANTS' failure to provide

1 accurate wage statements. As a result, these violations subject DEFENDANTS to civil penalties
2 under Labor Code § 226.3. Each violation results in a *separate* civil penalty, for each aggrieved
3 employee, for each pay period during which the statute provisions were violated.³

4 **Standard Conditions of Labor Violations**

5 111. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
6 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
7 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
8 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
9 violations with respect to meal periods, rest periods, record keeping provisions, and
10 minimum/overtime wages result in separate violations of sections 1198 and 1199, which subject
11 DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

12 **Sick Leave Violations**

13 112. Throughout the relevant time period, DEFENDANTS either failed to provide sick
14 leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick
15 leave due to DEFENDANTS' failure to account for actual hours worked (by virtue of
16 DEFENDANTS' meal period auto-deduction, and time rounding practices described herein),
17 and/or failure to incorporate all forms of non-discretionary remuneration into the sick pay
18 calculation. Such non-discretionary remuneration includes but not is not limited to non-
19 discretionary bonus pay and/or shift differential pay, and/or any other non-discretionary payment
20 including but not limited to additional compensation earned when working with patients that tested
21 positive for COVID-19.

22 113. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
23 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor

³ Labor Code § 226.3 (establishing that the civil penalty is “per employee per violation”).

1 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of
2 used sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF
3 and Aggrieved Employees' intelligent exercise of their paid sick leave.

4 114. But for this failure, PLAINTIFF and all AGGRIEVED Employees would have used
5 their paid sick leave at least prior to their respective separation, for as on several occasions
6 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
7 compensation.

8 115. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*
9 In violation of Labor Code § 247.5, DEFENDANTS also failed to maintain records documenting
10 the hours worked and paid sick days accrued and used by PLAINTIFF and other Aggrieved
11 Employees, permitting the presumption that PLAINTIFF and other Aggrieved Employees were
12 entitled to the maximum number of hours accruable at the time of their respective terminations.

13 116. DEFENDANTS further failed to comply with Labor Code section 246 by failing to
14 provide PLAINTIFF and Aggrieved Employees with a Labor Code 226 wage statement, or separate
15 writing showing the amount of paid sick leave available, or paid time off leave in lieu of sick leave,
16 at the time it pays wages.

17 117. On information and belief, PLAINTIFF alleges that all of these practices were
18 experienced and continue to be experienced by other similarly Aggrieved Employees.

19 118. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the foregoing
20 statutes, and Labor Code section 233 and 234, which incorporates the paid sick leave requirements.

21 **Untimely Payment of Final Wages**

22 119. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
23 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
and payable immediately." California Labor Code section 202(a) provides, in relevant part, that
"[i]f an employee not having a written contract for a definite period quits his or her employment,

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

4 120. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
5 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
6 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
7 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
8 section 256. *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348; *Caliber*
Bodyworks, Inc. v. Superior Court (2005) 134 Cal.App.4th 365.

9 121. Upon information and belief, DEFENDANTS paid and continue to untimely pay
10 final wages to PLAINTIFF and Aggrieved Employees without regard to the timing requirements
11 of Labor Code sections 201 and 202. For example, PLAINTIFF’s final paycheck was provided
12 over three days after her resignation, in violation of Labor Code section 202.

13 122. Moreover, as described above, even when PLAINTIFF and Aggrieved Employees
14 receive their final paychecks, such paychecks are devoid of: (1) all owed minimum wages, (2) all
15 owed overtime wages, (3) all owed premium wages, and (4) all owed sick pay or paid time off. As
16 a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These violations subject
17 DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256.

18 **Background Check Violations**

19 123. The California Labor Code places certain procedural and substantive limits on
20 employers’ ability to conduct employee background checks and on how employers can use the
21 information they obtain through those background checks. Labor Code section 1024.5 states that
22 employers, except for financial institutions, may order a credit check only if the individual works
23 (or is applying to work) in certain positions (e.g., managerial positions, financially-related
positions, and certain government positions). Labor Code Section 432.7 prohibits an employer

1 from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then,
2 certain limitations apply. Additionally, the Investigative Consumer Reporting Agencies Act
3 (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
4 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
5 background check, including but not limited to identifying an appropriate reason for the
6 background check, a separate consent form with required disclosures and certain formatting
7 requirements, additional forms such as a summary of rights, as well as proper notice of adverse
8 actions taken, among other statutory requirements.

9 124. DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit to
10 unlawful criminal and/or financial background checks as a condition of obtaining and/or holding
11 employment in violation of Labor Code section 1024.5 and Labor Code section 432.7.
12 DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in writing to
13 a background check which failed to abide by the requirements set forth in CA Civil Code section
14 1786, *et seq.*, and/or 15 U.S.C. section 1681, *et seq.*, and thus was an unlawful background check.
15 By having PLAINTIFF and other Aggrieved Employees sign off on the illegal background checks,
16 DEFENDANTS also violated Labor Code section 432.5 (stating that “no employer...shall require
17 any employee or applicant for employment to agree, in writing, to any term or condition which is
18 known by such employer...to be prohibited by law.”)

19 125. Under the provisions of PAGA and the above mentioned Labor Code sections,
20 including but not limited to Labor Code sections 201, 202, 203, 210, 225.5, 226, 226.3, 226.7, 245,
21 247, 248, 248.5, 256, 432, 432.5, 510 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
22 1198, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
23 interpretations of these laws by California Courts and administrative bodies, as well as any other
law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

a. All statutorily-specified penalties recoverable under PAGA as enumerated in the

relevant California Labor Code provisions listed herein only if permitted by the
PAGA statute, pursuant to Labor Code section 2699(a); and

b. Default PAGA penalties for any violation of the enumerated list of Labor Code
violations without a civil penalty recoverable under the PAGA, all in the default
amounts provided by Labor Code section 2699(f).

c. The proper measure of penalties under PAGA is the number of violations,
whether those violations were committed as against Plaintiff or any Aggrieved
Employee, whether a party to this action or not.

126. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of herself,
the State of California, and the Aggrieved Employees:

1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
25% payable to Aggrieved Employees);
2. For reasonable attorney's fees and costs of suit; and
3. For such other and further relief that the Court deems just and proper.

Dated: December 9, 2021

CROSNER LEGAL, P.C.



Zachary Crosner
Attorneys for Plaintiff,
LUZ M. ORDUNA

EXHIBIT

1



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September 28, 2021

VIA ONLINE FILING ONLY:

PAGAFilings@dir.ca.gov
California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL:

Irving Bauman,
Agent for Service of Process for:
Park Regency Care, LLC
3050 Saturn St. #201
Brea, California 92821

Park Regency Care, LLC
Attn: Human Resources/Legal Department
1770 W. La Habra Blvd.
La Habra, CA, 90631

Irving Bauman,
Agent for Service of Process for:
Bartlett Care Center, LLC
3050 Saturn St. #201
Brea, California 92821

Irving Bauman,
Agent for Service of Process for:
Gordon Lane Healthcare, LLC
3050 Saturn St. #201
Brea, California 92821

William Presnell,
Agent for Service of Process for:
Villa Rancho Bernardo Health Care, LLC
3050 Saturn St. #201
Brea, California 92821

William Presnell,
Agent for Service of Process for:
Garden Park Care Center, LLC
3050 Saturn St. #201
Brea, California 92821

William Presnell,
Agent for Service of Process for:
Sun-Mar Health Care, Inc.
3050 Saturn St. #201
Brea, California 92821

William Presnell,
Agent for Service of Process for:
Inland Medical Enterprises, Inc.
3050 Saturn St. #201
Brea, California 92821

Irving Bauman,
Agent for Service of Process for:
Anaheim Healthcare Center, LLC
3050 Saturn St. #201
Brea, California 92821

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency,
Park Regency Care, LLC, Bartlett Care Center, LLC, Gordon Lane Healthcare,
LLC, Villa Rancho Bernardo Health Care, LLC, Garden Park Care Center, LLC,
Sun-Mar Health Care, Inc., Anaheim Healthcare Center, LLC, and Inland Medical
Enterprises, Inc.
Date: September 28, 2021
Subject: *Ordua, et al. v. Park Regency Care, LLC, et al.*

Introduction

This office represents COMPLAINANT, Luz Mary Ordua (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Park Regency Care, LLC, Bartlett Care Center, LLC, Gordon Lane Healthcare, LLC, Villa Rancho Bernardo Health Care, LLC, Garden Park Care Center, LLC, Sun-Mar Health Care, Inc., Anaheim Healthcare Center, LLC, and Inland Medical Enterprises, Inc. (hereinafter collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all non-exempt employees employed by EMPLOYER within one year of the date of this notice (“AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via its Agent(s) for Service of Process as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C. at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. If EMPLOYER intends to cure the alleged violations within the statutory time period set forth in sections 2699 and 2699.3(a), the EMPLOYER shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699.

Based on the following summary of the facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER. The specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 221-223, 226, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2802, 2810.5 and all applicable Wage Orders.

**The Named Entities Are Joint Employers of COMPLAINANT and AGGRIEVED
EMPLOYEES**

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times Park Regency Care, LLC, Bartlett Care Center, LLC, Gordon Lane Healthcare, LLC, Villa Rancho Bernardo Health Care, LLC, Garden Park Care Center, LLC, Sun-Mar Health Care, Inc., Anaheim Healthcare Center, LLC, and Inland Medical Enterprises, Inc. operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise,

courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT is informed and believes and thereon alleges that Park Regency Care, LLC, Bartlett Care Center, LLC, Gordon Lane Healthcare, LLC, Villa Rancho Bernardo Health Care, LLC, Garden Park Care Center, LLC, Sun-Mar Health Care, Inc., Anaheim Healthcare Center, LLC, and Inland Medical Enterprises, Inc., and each of them, are owned and operated by the same individuals, including but not limited to, Irving Bauman, share the same headquarters/principal place of business/principal executive office at 3050 Saturn St. #201, Brea, California 92821, and share the same general managers and human resources department/personnel. As a result, Park Regency Care, LLC, Bartlett Care Center, LLC, Gordon Lane Healthcare, LLC, Villa Rancho Bernardo Health Care, LLC, Garden Park Care Center, LLC, Sun-Mar Health Care, Inc., Anaheim Healthcare Center, LLC, and Inland Medical Enterprises, Inc. utilized the same unlawful wage and hour policies and practices, such as but not limited to, those pertaining to payment of minimum and overtime wages and sick leave wages, time record-keeping, provision of wage statements, timely provision of final pay, and business expense reimbursement.

COMPLAINANT is informed and believes and hereon asserts that Park Regency Care, LLC, Bartlett Care Center, LLC, Gordon Lane Healthcare, LLC, Villa Rancho Bernardo Health Care, LLC, Garden Park Care Center, LLC, Sun-Mar Health Care, Inc., Anaheim Healthcare Center, LLC, and Inland Medical Enterprises, Inc. and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT.

By reason of their status as joint employers of COMPLAINANT and AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violation of the California Labor Code and applicable Wage Orders as to COMPLAINANT and other AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated COMPLAINANT and other AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and

judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

Park Regency Care, LLC, Bartlett Care Center, LLC, Gordon Lane Healthcare, LLC, Villa Rancho Bernardo Health Care, LLC, Garden Park Care Center, LLC, Sun-Mar Health Care, Inc., Anaheim Healthcare Center, LLC, and Inland Medical Enterprises, Inc. and its managing agents own, operate, or otherwise manage companies that operate skilled nursing facilities throughout California. While EMPLOYER may operate successful companies/have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER, at EMPLOYER's Park Regency Care Center, located in La Habra, California, from in or about 2014 until COMPLAINANT resigned from her employment, on or about August 10, 2021. COMPLAINANT and similarly AGGRIEVED EMPLOYEES typically worked approximately seven (7) to sixteen hours per day, two (2) to five (5) days per week. COMPLAINANT and similarly AGGRIEVED EMPLOYEES worked as caregivers. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were paid on an hourly basis. At all relevant times, COMPLAINANT and similarly AGGRIEVED EMPLOYEES were hourly paid, non-exempt employees.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and similarly AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay employees at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to provide COMPLAINANT and similarly AGGRIEVED EMPLOYEES with proper meal or rest breaks, and/or compensate COMPLAINANT and similarly AGGRIEVED EMPLOYEES an additional hour of premium pay for missed/improper meal and/or rest periods; (5) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and similarly AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (6) failed and continues to fail to place COMPLAINANT and similarly AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (7) failed and

continues to fail to provide legally compliant wage statements to COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (8) made unlawful deductions from COMPLAINANT and similarly AGGRIEVED EMPLOYEES' paychecks; (9) failed and continues to fail to timely pay wages to COMPLAINANT and similarly AGGRIEVED EMPLOYEES during employment and upon separation of employment; (10) failed and continues to fail to reimburse COMPLAINANT and similarly AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (11) conducts illegal background checks as a condition of COMPLAINANT and similarly AGGRIEVED EMPLOYEES' hire or maintaining their employment; and (12) requires COMPLAINANT and similarly AGGRIEVED EMPLOYEES to impermissibly disclose arrests on their employment applications and sign off on same. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and similarly AGGRIEVED EMPLOYEES. IWC Wage Order 5-2001, section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, EMPLOYER has failed, and continues to fail, to keep accurate and complete payroll records as required by law.

EMPLOYER has failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and similarly AGGRIEVED EMPLOYEES by virtue of EMPLOYER's automatic meal break deductions and time rounding policies and practices, described below.

EMPLOYER further failed, and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER's failure to relieve COMPLAINANT and similarly AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control for unpaid meal periods, resulting in unpaid hours worked.

EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT and similarly AGGRIEVED EMPLOYEES' meal periods.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and Wage Order 5-2001, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code § 512 (and all applicable IWC Wage Orders), §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 5-2001, §7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing §7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours) meal period. Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and similarly AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods and/or work through part or all their meal periods due to the nature and constraints of their job duties and or commentary from supervisors pressuring them to take non-compliant breaks or skip breaks completely. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out for meal periods but to continue working due to lack of coverage/lack of relief workers available.

EMPLOYER implemented a policy and practice of automatically deducting/requiring COMPLAINANT and other AGGRIEVED EMPLOYEES to clock out at least thirty minutes per shift for these missed/improper meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other AGGRIEVED EMPLOYEES did not receive compliant meal periods.

EMPLOYER further implemented policies and practices that failed to relieve COMPLAINANT and other AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal breaks.

Based on further information and belief, EMPLOYER rounded the start and end times of employee meal periods resulting in COMPLAINANT and other AGGRIEVED EMPLOYEES not being paid for all time worked as well as late or shortened meal periods.

Based on information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual or constructive knowledge that its time-rounding and auto-deduction policies and practices resulted in the denial of meal periods owed COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER never paid COMPLAINANT and other AGGRIEVED EMPLOYEES an additional hour of wages at their respective regular rates of pay for each workday a proper meal period was not provided. *Brinker, supra*, 53 Cal.4th 1004. EMPLOYER either failed to pay a meal period premium at all for each workday a proper meal period was not provided or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift differential pay into the regular rate for purposes of calculating the owed meal period premium.

COMPLAINANT and other AGGRIEVED EMPLOYEES consistently worked shifts of five and one half (5 ½) hours or more. COMPLAINANT and other AGGRIEVED EMPLOYEES would not receive a single thirty minute meal break. EMPLOYER did not provide COMPLAINANT and other AGGRIEVED EMPLOYEES with proper meal breaks. After five (5) hours of work, COMPLAINANT and other AGGRIEVED EMPLOYEES would be required to work through their meal periods. Despite not providing COMPLAINANT and other AGGRIEVED EMPLOYEES with the meal breaks to which they were legally entitled, EMPLOYER did not pay any premiums for these missed meal breaks in violation of California law or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift differential pay into the regular rate for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, §11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code

section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violation of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. See applicable IWC Wage Order, §12(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other AGGRIEVED EMPLOYEES with appropriate rest periods at a rate of every four (4) hours worked or major fraction thereof.

COMPLAINANT and other AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law.

Any purported rest periods would be interrupted, cut short, on duty, and or late due to the nature and constraints of COMPLAINANT and other AGGRIEVED EMPLOYEES' job duties and or commentary from supervisors pressuring them to skip rest breaks completely or take non-compliant rest breaks. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were instructed by their supervisors to work through their rest periods due to lack of coverage/lack of relief workers available.

COMPLAINANT and other AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once jobs were completed/if time permitted.

EMPLOYER had no policy in place nor instruction as to the taking, timing, or duty-free nature of rest periods. COMPLAINANT and other AGGRIEVED EMPLOYEES were never paid a rest

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 5-2001, §20 (establishing that "in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

period premium for any missed/improper rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-2001, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code section 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Minimum Wage Violations: Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

EMPLOYER failed to compensate COMPLAINANT and other AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER'S automatic deduction and time rounding policies and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

COMPLAINANT and other AGGRIEVED EMPLOYEES were consistently unable to take off duty, thirty-minute, uninterrupted meal periods, often being forced to work through part or all their meal periods due to the nature and constraints of their job duties and or commentary from supervisors pressuring COMPLAINANT and other AGGRIEVED EMPLOYEES to take non-compliant breaks or skip breaks completely. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out for meal periods but to continue working due to lack of coverage/lack of relief workers available.

EMPLOYER implemented a policy and practice of automatically deducting at least thirty minutes per shift for meal periods/requiring COMPLAINANT and other AGGRIEVED EMPLOYEES to clock out for at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other AGGRIEVED EMPLOYEES were working through part or all these meal periods.

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); IWC Wage Order 5-2001, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Based on further information and belief, EMPLOYER rounded the start and end times of employee meal periods and shift start and end times resulting in COMPLAINANT and other AGGRIEVED EMPLOYEES not being paid for all time worked.

Based on information and belief, EMPLOYER had actual or constructive knowledge that its time-rounding and auto-deduction policies and practices and failure to provide off-duty meal periods resulted in the underpayment of minimum wages owed COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Wage Order 5-2001, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order 5-2001, §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by COMPLAINANT and other AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies and practices described herein resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages to COMPLAINANT and those AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week.

Based on information and belief, EMPLOYER failed to pay proper overtime rates to AGGRIEVED EMPLOYEES due to EMPLOYER's failure to incorporate all forms of non-discretionary compensation, including but not limited to, shift differential pay and or non-discretionary bonus pay, into the regular pay rate for purposes of calculating the owed overtime rate, resulting in the underpayment of overtime wages owed.

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 5-2001, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 5-2001, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and Wage Order 5-2001, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Violation of California Labor Code Sections 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide paid sick leave at all to AGGRIEVED EMPLOYEES or failed to properly accrue all owed sick leave, due to, including but not limited to, EMPLOYER's failure to account for true actual hours worked (by virtue of EMPLOYER's meal period auto-deduction and time rounding practices, as described herein) and or failure to incorporate all forms of non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift pay differential pay, into the sick pay calculation.

EMPLOYER further failed to put them on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code § 2810.5 notice.

In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the employee throughout the relevant time period.

Throughout the relevant time period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and all AGGRIEVED EMPLOYEES, and thus affecting their intelligent exercise of their paid sick leave.

But for this failure, COMPLAINANT and all AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separation, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all AGGRIEVED EMPLOYEES.

In violation of Labor Code § 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT all AGGRIEVED

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

EMPLOYEES were entitled to the maximum number of hours accruable under this article at the time of his termination.

EMPLOYER further failed and continues to fail to comply with Labor Code § 246, by providing COMPLAINANT all AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid and was not as a result of its failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other similarly AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all AGGRIEVED EMPLOYEES an additional hour of pay for each meal or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁶

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage

⁶ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) 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; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. § 226.

EMPLOYER's wage statements that it provided to COMPLAINANT and all AGGRIEVED EMPLOYEES failed to indicate the "total hours worked" by the COMPLAINANT and all AGGRIEVED EMPLOYEES (by virtue of the automatic deduction for meal periods and time-rounding policies and practices, all described in greater detail *supra*).

In addition, because of the violations detailed above, including not paying regular and overtime wages for all hours worked and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code section 226 by willfully failing to furnish COMPLAINANT and all AGGRIEVED EMPLOYEES with accurate, itemized wage statements.

As a result, the wage statements provided to COMPLAINANT and all AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁷

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other AGGRIEVED EMPLOYEES minimum wage and overtime compensation which resulted in the payment of less than statutorily required wages to them. EMPLOYER acted with the intent to

⁷ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and all AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

EMPLOYER failed to timely pay COMPLAINANT and other AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation.

Upon separation of employment, COMPLAINANT and other AGGRIEVED EMPLOYEES' final paychecks were not timely provided, and COMPLAINANT and other AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum and overtime wages and all owed sick leave wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.⁸

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. See Cal. Lab. Code section 2802(a) and all applicable Wage Orders, section 9 (b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees incurred by the employee enforcing the rights granted by this section."

Among other things, under California law, when 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

⁸ (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

maintained by 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. See applicable IWC Wage Order, section 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." See Cal. Lab. Code section 2804.

Based on information and belief, COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto COMPLAINANT and other AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to use of COMPLAINANT's mobile phone and data usage and uniforms/work clothing.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and other AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT and other AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by their employer and/or carrying out the duties assigned by their employers.

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, cell phone/data plan charges and costs associated with the maintenance/purchase of uniforms/work clothing.

EMPLOYERS' failure to provide COMPLAINANT and other AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and other AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Background Check Violations: The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, et seq.) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER required COMPLAINANT and all AGGRIEVED EMPLOYEES to submit to an unlawful criminal and/or financial background check as a condition of obtaining and/or holding employment in violation of Labor Code sections 1024.5 and 432.7.

Based on information and belief, EMPLOYER also required COMPLAINANT and other AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, et seq. and 15 U.S.C. section 1681, et seq., and thus was an unlawful background check.

Based on further information and belief, EMPLOYER knew that requiring COMPLAINANT and AGGRIEVED EMPLOYEES to agree to these criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By having COMPLAINANT and other AGGRIEVED EMPLOYEES sign off on the illegal background checks, Employer also violated Labor Code section 432.5 (stating that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.").

Furthermore, based on information and belief, EMPLOYER asked about arrests not resulting in convictions on its employment application, in violation of California law.

EMPLOYER has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Conclusion

Labor Code section 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirement created by Labor Code sections 2699, 2699.3(a), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all other AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The signature is written in a cursive, flowing style.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC