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13 BLANCA VILLAGOMEZ

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES**

16 BLANCA VILLAGOMEZ, an individual,
17 on behalf of herself, and all others
18 similarly aggrieved,

19 Plaintiff,

20 v.

21 SIMI VALLEY HOSPITAL AND
22 HEALTH CARE SERVICES, a
23 California corporation and DOES 1-100,
24 inclusive,

25 Defendants.

CASE NO. **21STCV43678**

**PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") REPRESENTATIVE
COMPLAINT**

1 Plaintiff BLANCA VILLAGOMEZ (“PLAINTIFF”), an individual, on behalf of
2 PLAINTIFF and all others similarly aggrieved, hereby files this Complaint against Defendant
3 SIMI VALLEY HOSPITAL AND HEALTH CARE SERVICES (“SIMI VALLEY
4 HOSPITAL” or “DEFENDANT”) and DOES 1-100, inclusive. PLAINTIFF is informed and
5 believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in Los Angeles County, California, because DEFENDANT maintains its principal place
9 of business in Los Angeles County. Moreover, DEFENDANT transacts business within this
10 judicial district and some of the complained of conduct occurred in this judicial district. *See also*
11 *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a
12 PAGA action is proper in any county where the defendants committed Labor Code violations
13 against some of its employees).

14 **THE PARTIES**

15 2. PLAINTIFF resides in Los Angeles County, in the State of California. PLAINTIFF was
16 employed by DEFENDANT in the State of California as a non-exempt, hourly-paid employee,
17 during the relevant time period.

18 3. Defendant SIMI VALLEY HOSPITAL AND HEALTH CARE SERVICES is a
19 California corporation that, at all relevant times, was authorized to do business within the State
20 of California and is doing business in the State of California. DEFENDANT owns, operates, or
21 otherwise manages a hospital located at 2975 Sycamore Drive, Simi Valley, California 93065.

22 4. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
23 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such Defendant
24 by said fictitious names. Each of the Defendants designated herein as a DOE is legally
25 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend
26 this Complaint to reflect the true names and capacities of the Doe Defendants when such
27 identities become known.

1 5. PLAINTIFF is informed and believes that, at all relevant times, each Defendant was the
2 principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder,
3 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of
4 some or all of the other DEFENDANTS, and was engaged with some or all of the other
5 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
6 other DEFENDANTS so as to be liable for their conduct with respect to the matters alleged in
7 this complaint. PLAINTIFF is further informed and believes and thereon alleges that each
8 Defendant acted pursuant to and within the scope of the relationships alleged above, and that at
9 all relevant times, each Defendant knew or should have known about, authorized, ratified,
10 adopted, approved, controlled, aided and abetted the conduct of all other DEFENDANTS.

11 **FACTUAL AND LEGAL ALLEGATIONS**

12 6. During the one year and sixty-five-day period preceding filing of this Complaint,
13 PLAINTIFF was employed at all relevant times by DEFENDANT as a non-exempt employee in
14 the State of California. DEFENDANT, at all relevant times, exercised control over PLAINTIFF
15 and the other Aggrieved Employees (as defined below) and suffered and/or permitted them to
16 work.

17 7. PLAINTIFF has been employed by DEFENDANT as a non-exempt, Certified Nursing
18 Assistant (“CNA”) or other similar title since in or about 2005 and continuing through the
19 present.

20 8. PLAINTIFF’s official schedule was twelve and one half (12 ½)-hour shifts, three (3)
21 days a week. PLAINTIFF typically worked the night shifts. PLAINTIFF was paid on an hourly
22 basis, but only for time counted by DEFENDANT as hours worked, that is, the twelve and one
23 half (12 ½)-hour official shift time, after a daily meal period deduction of thirty minutes and
24 excluding the mandated pre-shift and post-shift off-the clock work described in further detail
25 below. At all relevant times, PLAINTIFF was employed as an hourly-paid, non-exempt
26 employee.

27 9. PLAINTIFF was not paid for all hours worked because of DEFENDANT’s automatic
28 deduction policy and practice for meal periods described in further detail below. Additionally,

1 DEFENDANT implemented a time-rounding system that, as applied, systemically deprived
2 PLAINTIFF of compensable time because the time-rounding system implemented by
3 DEFENDANT understated actual compensable work time. DEFENDANT adjusted
4 PLAINTIFF's time entries and or instructed PLAINTIFF to record only the scheduled beginning
5 and end times of PLAINTIFF's shifts rather than the actual times PLAINTIFF began and stopped
6 working, resulting in understating actual time worked and the underpayment of both minimum
7 and overtime wages owed to PLAINTIFF. For example, PLAINTIFF was required to show up
8 to work approximately ten (10) minutes prior to the start of her official shift start time for a daily
9 briefing from the day-shift crew regarding the day's activities; it was only after this briefing that
10 PLAINTIFF was permitted to clock in for the start of PLAINTIFF's shifts. At the end of
11 PLAINTIFF's shifts, PLAINTIFF was required to clock out and then wait until the day-shift
12 crew arrived (typically at least 15-20 minutes) so that PLAINTIFF could then brief the day-shift
13 crew on the night's activities. None of this work time was compensated. If PLAINTIFF clocked
14 in before the beginning of PLAINTIFF's scheduled shift time or past the end of PLAINTIFF's
15 scheduled shift time, DEFENDANT would deduct/round the time such that PLAINTIFF was not
16 compensated for this pre-shift and post-shift work time, resulting in the underpayment of
17 minimum and overtime wages owed PLAINTIFF.

18 10. DEFENDANT further violated California's overtime wage laws by failing to
19 incorporate all non-discretionary compensation, including but not limited to, shift differential
20 and or non-discretionary bonus compensation, into the regular pay rate used to calculate the
21 overtime rate of pay. Failing to include non-discretionary compensation in the regular pay rate
22 resulted in a miscalculation of the overtime wage rate, resulting in the underpayment of overtime
23 wages owed PLAINTIFF.

24 11. PLAINTIFF was consistently unable to take timely, off duty, thirty-minute,
25 uninterrupted meal periods, usually being forced to take late meal periods and/or work through
26 part or all her meal periods due to the nature and constraints of PLAINTIFF's job duties and lack
27 of relief nurses available and commentary from supervisors pressuring PLAINTIFF to take non-
28 compliant breaks or skip breaks completely. PLAINTIFF was instructed by her

1 supervisors/charge nurses to work through her meal periods when the hospital was busy and to
2 only take a meal period when time permitted. DEFENDANT instructed PLAINTIFF to clock out
3 thirty minutes for these missed/interrupted/shortened/on-duty meal periods but to continue
4 working. DEFENDANT implemented policies and practices that failed to relieve PLAINTIFF
5 of all duties and employer control during unpaid meal breaks, *to wit*: Per DEFENDANT's
6 uniform policy and practice, DEFENDANT required PLAINTIFF to remain tethered to
7 PLAINTIFF's work site and work communication device during any meal periods;
8 DEFENDANT prohibited PLAINTIFF from leaving PLAINTIFF's immediate work area during
9 PLAINTIFF's shifts, including during any meal periods. DEFENDANT instructed PLAINTIFF
10 to monitor PLAINTIFF's work communication device throughout PLAINTIFF's shifts,
11 including during any meal periods. Nevertheless, DEFENDANT implemented a policy and
12 practice of automatically deducting thirty minutes per shift for these missed/improper meal
13 periods, despite having actual and/or constructive knowledge that PLAINTIFF did not receive
14 compliant meal periods.

15 12. Per DEFENDANT's unlawful meal period policies and practices, PLAINTIFF was
16 never provided with a second meal period even though she consistently worked shifts of at least
17 ten hours (10) hours and thus was entitled to a second 30-minute, duty free, uninterrupted meal
18 period before the end of the tenth hour of work.

19 13. Based on information and belief, DEFENDANT rounded the start and end times of
20 employee meal periods and start and end time of employee shifts resulting in PLAINTIFF not
21 being paid for all time worked. PLAINTIFF is further informed and believes and thereon alleges
22 that DEFENDANT had actual or constructive knowledge that its time-rounding and auto-
23 deduction policies and practices resulted in the denial of lawful meal periods to PLAINTIFF and
24 the underpayment of wages owed PLAINTIFF, in violation of California's minimum and
25 overtime wage and meal period laws. DEFENDANT never paid PLAINTIFF an additional hour
26 of wages at her regular rate of pay for each workday a compliant meal period was not provided.

27 14. Throughout her employment with DEFENDANT, DEFENDANT clocked
28 PLAINTIFF out for thirty minutes each shift for a meal period, when PLAINTIFF was tethered

1 to her work site, still attending to patients/completing work tasks, monitoring work
2 communication devices for and or responding to work communications and thus was not relieved
3 of all duties or employer control.

4 15. PLAINTIFF consistently did not receive compliant, timely ten-minute rest periods
5 every four (4) hours worked or major fraction thereof. DEFENDANT did not properly authorize
6 and provide PLAINTIFF with appropriate rest periods at a rate of every four (4) hours worked
7 or major fraction thereof. PLAINTIFF was not adequately informed, authorized, instructed
8 about, nor permitted an opportunity to take proper rest breaks per California law. Any purported
9 rest periods would be interrupted, cut short, on duty, and or late due to the nature and constraints
10 of PLAINTIFF's job duties and commentary from supervisors pressuring PLAINTIFF to take
11 non-compliant rest breaks or skip rest breaks completely.

12 16. DEFENDANT implemented policies and practices that failed to relieve PLAINTIFF of
13 all duties and employer control during rest breaks, *to wit*: DEFENDANT required PLAINTIFF
14 to remain tethered to her work site and work communication device during any rest periods;
15 DEFENDANT prohibited PLAINTIFF from leaving PLAINTIFF's immediate work area during
16 PLAINTIFF's shifts, including during any rest periods; DEFENDANT required PLAINTIFF to
17 monitor a work communication device throughout PLAINTIFF's shifts, including during any
18 rest periods. Due to pressure to complete work tasks within time frames imposed by
19 DEFENDANT that prohibited the taking of proper rest periods and DEFENDANT's policy and
20 practice of requiring its employees to monitor a work communication device and remain on the
21 worksite premises during any rest periods, PLAINTIFF was never afforded a legally compliant
22 rest period during her employment.

23 17. PLAINTIFF was not provided third rest periods at all despite consistently working
24 shifts of more than ten hours. PLAINTIFF was not provided compliant first, second nor third rest
25 periods. Per DEFENDANT's unlawful rest period policy and practice, PLAINTIFF was only
26 permitted two (2) fifteen-minute rest periods per twelve-hour shift as opposed to the three (3) to
27 which she was entitled, and even those purportedly allowed rest periods were typically worked
28 through/on-duty or otherwise non-compliant with California law.

1 18. DEFENDANT did not authorize nor permit PLAINTIFF to take compliant rest breaks.
2 DEFENDANT did not advise PLAINTIFF when rest breaks should be taken, how long rest
3 breaks should be, how many rest breaks she should receive in a given shift, nor that rest breaks
4 should be free of all duties and employer control. DEFENDANT had no policy in place nor
5 instruction as to the taking, timing, or duty-free nature of rest periods. PLAINTIFF was never
6 paid a rest period premium for any missed/improper rest period in violation of California law

7 19. DEFENDANT had actual and or constructive knowledge that its meal and rest period
8 policies and practices resulted in PLAINTIFF and the Aggrieved Employees consistently being
9 denied legally compliant meal and rest periods. On various diverse dates, PLAINTIFF
10 complained to DEFENDANT about the denial of breaks, that PLAINTIFF and other workers
11 were unable to stop working even long enough to use the restroom due to their workload/lack of
12 relief workers available. PLAINTIFF repeatedly complained to DEFENDANT that
13 DEFENDANT's unlawful meal and rest period policies and practices had created an
14 unsafe/unhealthy workplace for PLAINTIFF and the other workers. DEFENDANT failed to
15 remedy the situation in response to PLAINTIFF's complaints.

16 20. DEFENDANT failed to furnish PLAINTIFF with complete and accurate wage
17 statements that complied with Labor Code section 226. DEFENDANT's wage statements do not
18 accurately reflect, the total gross and net wages earned, including, all earned minimum and
19 overtime wages, all accrued and owed sick leave, and do not accurately reflect all applicable
20 hourly rates in effect during the pay period and the corresponding number of hours worked at
21 each hourly rate.

22 21. Notably, due to DEFENDANT's unlawful automatic deduction and time-rounding
23 policies and practices, payment according to scheduled hours instead of actual hours worked,
24 failing to relieve employees of all duties for meal periods, and mandated pre-shift and post-shift
25 off-the-clock work, DEFENDANT's wage statements fail to reflect the true total hours worked,
26 a requirement of Labor Code section 226.

27 22. Based on information and belief, DEFENDANT required PLAINTIFF to submit to
28

1 an unlawful criminal and/or financial background check as a condition of obtaining and/or
2 holding employment in violation of Labor Code sections 1024.5 and/or 432.7. Based on further
3 information and belief, DEFENDANT also required PLAINTIFF to agree in writing to unlawful
4 background checks not in conformity with the requirements of Investigative Consumer Reporting
5 Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and the Fair Credit Reporting Act,
6 15 U.S.C. sections 1681, et seq. ("FCRA"), in violation of Labor Code section 432.5. Based on
7 information and belief, DEFENDANT asked about arrests not resulting in convictions on its
8 employment application, in violation of Labor Code section 432.7, and or otherwise unlawfully
9 asked about criminal convictions/unlawfully required the disclosure of criminal convictions prior
10 to extending a conditional offer of employment and required PLAINTIFF to agree in writing to
11 the unlawful disclosures, in violation of Labor Code section 432.5.

12 23. PLAINTIFF is informed and believes and allege thereon that DEFENDANT engaged
13 in these same herein described unlawful practices with regard to all of the Aggrieved Employees
14 (defined below), and that DEFENDANT applied these same herein described unlawful practices
15 to all of its employees that it applied to PLAINTIFF.

16 **PAGA**

17 24. PLAINTIFF brings this complaint under the Private Attorneys General Act of 2004,
18 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of the State
19 of California, regarding violations of the Labor Code as to all similarly aggrieved individuals
20 employed by DEFENDANT in the State of California as a non-exempt employee. This action is
21 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

22 25. Under Labor Code section 2699.3, the LWDA must give written notice by certified
23 mail to the parties that it intends to investigate the alleged violations within 65 days of the date
24 of PLAINTIFF's written notice. PLAINTIFF has complied with the administrative exhaustion
25 procedures for bringing suit specified in Labor Code sections 2699.3 and 2699.5. PLAINTIFF
26 gave timely written notice by certified mail to DEFENDANT of the violation of various
27 provisions of the California Labor Code as alleged in this complaint and filed notice of the
28 violations online with the Labor and Workforce Development Agency ("LWDA"). PLAINTIFF

1 filed PLAINTIFF's notice with the LWDA on September 24, 2021 and served DEFENDANT
2 via certified mail. The LWDA assigned PLAINTIFF the following case number: LWDA-CM-
3 845933-21.

4 26. The LWDA did not provide notice of its intention to investigate PLAINTIFF's claims
5 on behalf of the State of California and the Aggrieved Employees after expiration of the 65-day
6 waiting time period, or at any time. DEFENDANT also failed to cure within the time allotted by
7 PAGA. Consequently, PLAINTIFF has exhausted all administrative remedies and PLAINTIFF's
8 right to file the instant lawsuit then duly accrued.

9 27. From one-year prior to PLAINTIFF's filing of the required PAGA notice with the
10 Labor Workforce and Development Agency, and continuing through the present, as alleged herein,
11 DEFENDANT violated Labor Code sections 201-202, 216, 221-223, 226, 226.7, 233-234,
12 245-248.5, 432.5, 432.7, 510, 512, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5,
13 and all relevant sections of the applicable Wage Orders, as to PLAINTIFF and all Aggrieved
14 Employees employed by DEFENDANT as non-exempt employees. These violations subject
15 DEFENDANT to civil penalties as set forth in the foregoing statutes as well as other
16 provisions of the Labor Code, including without limitation Labor Code sections 203, 210,
17 225.5, 226, 226.3, 256, 558, 558.1, 1174.5, 1197.1 and 2699.

18 28. PLAINTIFF is an "aggrieved employee" as that term is defined under the Labor Code
19 section 2699(c), as PLAINTIFF was employed by DEFENDANT during the applicable statutory
20 limitations period and suffered one or more of the Labor Code violations set forth herein.
21 Accordingly, PLAINTIFF seeks to recover on behalf of herself and all Aggrieved Employees,
22 the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

23 29. PLAINTIFF has standing to bring a PAGA action on behalf of the defined
24 Aggrieved Employees, as she was employed by DEFENDANT and affected by one or more
25 of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
26 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
27 committed by the employer – regardless of whether PLAINTIFF experienced all violations
28 personally. *Id.* at 760-761.

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1 per workday and must be paid double the regular hourly rate of pay for each hour worked beyond
2 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the
3 seventh consecutive day of work in a work week, unless they are exempt.

4 37. PLAINTIFF and all Aggrieved Employees were non-exempt employees who regularly
5 worked time for which they were not compensated, resulting in unpaid minimum wages as well
6 as unpaid overtime wages for those Aggrieved Employees who worked more than forty (40)
7 hours per week or more than eight (8) hours in a workday.

8 38. PLAINTIFF and other Aggrieved Employees were not paid for all hours worked
9 because of DEFENDANT's auto-deduction policy and practice for meal periods, payment of
10 wages based on scheduled hours and not actual hours worked, and rounded time entries.
11 DEFENDANT had and continue to have a continuous policy of clocking out Aggrieved
12 Employees for at least thirty minutes, even though Aggrieved Employees were not relieved of
13 all duties and employer control during said meal periods, rendering the unpaid time compensable
14 under California law. DEFENDANT had and continues to have a continuous policy of rounding
15 Aggrieved Employees time punches, including meal period time punches. On information and
16 belief, this policy favored DEFENDANT more often than not, resulting in significant
17 uncompensated time worked by Aggrieved Employees. DEFENDANT had and continues to
18 have a continuous policy of paying Aggrieved Employees for scheduled hours, rather than the
19 time actually reflected on Aggrieved Employees' time records. This regular performance of off-
20 the-clock work resulted in the underpayment of minimum wages owed Aggrieved Employees,
21 the underpayment of overtime wages for those Aggrieved Employees who worked more than
22 eight (8) hours per workday or more than forty per week, as well as record-keeping violations.

23 39. DEFENDANT further violated California's overtime wage laws by failing to
24 incorporate all non-discretionary compensation, including but not limited to, shift differential
25 and or non-discretionary bonus compensation, into the regular pay rate used to calculate the
26 overtime rate of pay. Failing to include non-discretionary compensation in the regular pay rate
27 resulted in a miscalculation of the overtime wage rate, resulting in the underpayment of overtime
28 wages owed PLAINTIFF. Based on information and belief, DEFENDANT failed to properly

1 blend multiple rates of regular pay in calculating the owed overtime rate(s), resulting in the
2 miscalculation and underpayment of overtime wages owed Aggrieved Employees.

3 **40. Meal Breaks.** Under Labor Code sections 226.7, 512, and the applicable IWC Wage
4 Orders, DEFENDANT was required to provide PLAINTIFF and the Aggrieved Employees with
5 one thirty (30) minute meal break free from all duties for all shifts greater than five (5) but less
6 than ten (10) hours in length, and a second thirty (30) minute meal break free from all duties for
7 all shifts of ten (10) hours or more. The first meal period must be provided before the end of the
8 fifth hour of work and the second meal period before the end of the tenth hour of work. Employers
9 covered by the Wage Orders have an obligation to both (a) relieve their employees for at least
10 one meal period for shifts over five hours, and (b) to record having done so. If the employer fails
11 to properly record a compliant meal period, it is presumed no meal period was provided.
12 PLAINTIFF and the Aggrieved Employees were not provided timely, off-duty, uninterrupted
13 thirty-minute meal periods.

14 **41.** PLAINTIFF and other Aggrieved Employees consistently worked shifts of five and a
15 half hours or more. PLAINTIFF and other Aggrieved Employees would not receive a single
16 legally compliant thirty (30) minute first or second meal break. PLAINTIFF and similarly
17 Aggrieved Employees were consistently unable to take timely, off duty, thirty-minute,
18 uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods,
19 and/or work through part or all their meal periods due to the nature and constraints of their job
20 duties and or commentary from supervisors pressuring them to take non-compliant breaks or skip
21 breaks completely. DEFENDANT implemented a policy and practice of automatically deducting
22 at least thirty minutes per shift for these missed/improper meal periods, despite having actual
23 and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did not receive
24 compliant meal periods. DEFENDANT further implemented policies and practices that failed to
25 relieve PLAINTIFF and other Aggrieved Employees of all duties and DEFENDANTS' control
26 during unpaid meal breaks. Based on further information and belief, DEFENDANT illegally
27 rounded the start and end times of employee meal periods resulting in PLAINTIFF and other
28 Aggrieved Employees not being paid for all time worked as well as late or shortened meal

1 periods. See *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th 58. Based on information and
2 belief, DEFENDANT did not have a written meal break policy, nor did DEFENDANT have any
3 sort of compliant policy in practice. Liability for the aggrieved employees can be established by
4 evidence that an employer adopted a uniform corporate break policy that failed to give full effect
5 to California law and the applicable Wage Order requirements. The fact that employees may
6 legally waive meal breaks does not affect this result. *Brinker Restaurant Corp. v. Superior Court*
7 (2012) 53 Cal.4th 1004. PLAINTIFF is further informed and believes and thereon alleges that
8 DEFENDANT had actual or constructive knowledge that its time-rounding and auto-deduction
9 policies and practices resulted in the denial of meal periods owed PLAINTIFF and other
10 Aggrieved Employees, in violation of California's meal period laws. DEFENDANT never paid
11 PLAINTIFF and other Aggrieved Employees an additional hour of wages at their respective
12 regular rates of pay for each workday a proper meal period was not provided.

13 **42. Rest Breaks.** PLAINTIFF and other Aggrieved Employees did not receive compliant
14 net ten (10)-minute rest periods for every four (4) hours worked (or major fraction thereof), as
15 required by Labor Code 226.7 and the applicable IWC Wage Orders. PLAINTIFF and other
16 Aggrieved Employees regularly worked more than three-and-one-half (3½) hours without being
17 authorized or permitted to take a paid net ten (10) minute rest period. DEFENDANT required
18 PLAINTIFF and other Aggrieved Employees to continuously work without authorizing or
19 providing paid rest periods. Any purported rest periods would be interrupted, cut short, on duty,
20 and or late due to the nature and constraints of the Aggrieved Employees' job duties and or
21 commentary from DEFENDANT pressuring the Aggrieved Employees to skip rest breaks
22 completely/take non-compliant rest breaks. PLAINTIFF and other Aggrieved Employees were
23 unable to avail themselves of their rest breaks for various reasons, including but not limited to,
24 pressure to attend to patients' needs whenever they arose and or complete their work duties
25 according to a designated schedule such that rest breaks were only taken once jobs were
26 completed/as time permitted. DEFENDANT implemented policies and practices that failed to
27 relieve Aggrieved Employees of all duties and employer control during rest periods. Per
28 DEFENDANT's policy, DEFENDANT required Aggrieved Employees to remain tethered to

1 their worksites and work communication devices during any rest periods, rendering any
2 purported rest periods on duty or otherwise noncompliant with California law. See *Augustus v.*
3 *ABM Security Services, Inc.*, (2016) 5 Cal.5th 257. DEFENDANT had no policy in place nor
4 instruction as to the taking, timing, or duty-free nature of rest periods. PLAINTIFF and other
5 Aggrieved Employees were never paid a rest period premium for any missed/improper rest
6 period.

7 **43. Unpaid Sick Leave Wages.** DEFENDANT failed to provide PLAINTIFF and the
8 Aggrieved Employees paid sick days in accordance with Labor Code sections 245 through 248.5,
9 further failing to put them on notice of their paid sick leave rights—or thereby putting their
10 entitlement to sick leave in a Labor Code section 2810.5 notice. DEFENDANT failed to maintain
11 accurate records documenting the hours worked and paid sick days accrued and used by
12 employees in violation of Labor Code section 247.5, permitting the presumption that Aggrieved
13 Employees were entitled to the maximum number of hours accruable at the time of their
14 respective separations of employment. By failing to correctly account for the true hours worked
15 by Aggrieved Employees (by virtue of the auto-deduction and time rounding policies, and failure
16 to account and pay for all hours worked, as described herein) and or failing to provide paid sick
17 leave at all, DEFENDANT unlawfully retained and continue to retain paid sick leave that should
18 have been paid and was not. Accordingly, DEFENDANT has violated Labor Code sections 233
19 and 234 as to the Aggrieved Employees. DEFENDANT either failed to pay sick leave at all or
20 improperly calculated the sick leave accrual and the rate of sick leave pay owed to PLAINTIFF
21 and the Aggrieved Employees by failing to base the accrued sick leave hours on the correct
22 number of hours worked due to the auto-deduction and time rounding policies, and failure to pay
23 for all hours worked, as described herein. DEFENDANT further failed to comply with Labor
24 Code section 246 by failing to provide PLAINTIFF and the Aggrieved Employees with wage
25 statements or separate documents showing the amount of paid sick leave available, or paid time
26 off leave in lieu of sick leave. DEFENDANT violated and continues to violate Labor Code
27 section 246 by failing to provide PLAINTIFF and the Aggrieved Employees with a Labor Code
28 226 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.

44. **Inaccurate Wage Statements.** California Labor Code section 226 and the applicable IWC Wage Order provides that, at the time of each payment of wages, the employer must provide each employee with an itemized statement showing, *inter alia*, gross wages earned, total hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee is being paid, the employee's name and last four digits of their social security number, the name and address of the legal entity that it is the employer, and all applicable hourly rates in effect during the pay period and all hours worked at each rate.

45. DEFENDANT knew or had reason to know PLAINTIFF and the Aggrieved Employees were working during their meal breaks and otherwise working off-the-clock and not being paid for all hours worked. DEFENDANT knowingly and intentionally failed to provide PLAINTIFF and the Aggrieved Employees with accurate, itemized wage statements as the wage statements provided by DEFENDANT do not accurately reflect, *inter alia*, the correct total hours worked. Due to DEFENDANT's unlawful practice for shortened/on-duty meal periods and other mandated off-the-clock work as described herein, DEFENDANT's wage statements fail to reflect the true total hours worked by PLAINTIFF and the Aggrieved Employees worked, as required under Labor Code section 226. As a result of DEFENDANT's failure, PLAINTIFF and the Aggrieved Employees suffered injury. Accordingly, DEFENDANT has violated Cal. Labor Code section 226.

46. **Record Keeping.** California Labor Code sections 226 and 1174 require employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by all non-exempt employees. Section 7 of all applicable IWC Wage Orders similarly requires employers to keep time records showing, *inter alia*, when the employees begin and end each work period and reflecting the true start and end times during which all owed meal periods are provided each day. At all relevant times, DEFENDANT has failed, and continue to fail, to keep the required time records, as DEFENDANT has failed to record the true start and end times of PLAINTIFF's and the Aggrieved Employees' workdays and failed to record employee meal periods as time worked. DEFENDANT's failure to keep "accurate and complete" payroll records

1 for PLAINTIFF and the Aggrieved Employees violates Labor Code sections 1174, 1198-99, and
2 Section 7 of all applicable IWC Wage Orders. These violations subject DEFENDANT to civil
3 penalties under the Labor Code, including without limitation sections 1174.5 and 2699. Each
4 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
5 results in a separate civil penalty.

6 **47. Untimely Wages at Termination.** Labor Code section 201 requires employers to pay
7 all wages earned and unpaid at the time of discharge, immediately upon discharge, and Labor
8 Code section 202 extends those provisions to employees who resign. For all Aggrieved
9 Employees no longer employed by DEFENDANT, DEFENDANT has an ongoing failure to pay
10 such aggrieved employees all wages earned and unpaid at the time of discharge or resignation,
11 due to DEFENDANT's failure to pay, *inter alia*, all owed minimum, overtime and sick leave
12 wages and at the properly accrued rates. These violations subject DEFENDANT to civil penalties
13 under the Labor Code, including without limitation Labor Code sections 203, 256 and 2699.
14 Each violation results in a separate civil penalty, for each Aggrieved Employee for each pay
15 period during which the statutory provisions were violated.

16 **48. Refusal to Pay Wages Due.** Labor Code section 216 declares unlawful an employer's
17 refusal to pay wages due and payable and/or an employer's denial of the validity of any claim to
18 wages due. DEFENDANT has violated this section by, *inter-alia*, failing to pay PLAINTIFF and
19 the Aggrieved Employees for all hours worked at the proper wage rate and by failing to pay
20 PLAINTIFF and the Aggrieved Employees an additional hour of premium wages for each meal
21 or rest period not provided/that was invalid. These violations subject DEFENDANT to civil
22 penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for
23 each aggrieved employee, for each pay period during which the statute provisions were violated.

24 **49. Statutory Wages.** California Labor Code section 223 makes it unlawful for an
25 employer to secretly pay wages lower than required by statute while purporting to pay legal
26 wages. As described above, DEFENDANT willfully and systematically denied the Aggrieved
27 Employees minimum and overtime wage compensation for all hours worked which resulted in
28 the payment of less than statutorily required wages to them. DEFENDANT acted with the intent

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

3 **50. Unreimbursed Business Expenses.** Based on information and belief, DEFENDANT
4 regularly failed to reimburse and indemnify Aggrieved Employees for business expenses,
5 including but not limited to, costs associated with being required to use their cell phones/other
6 mobile devices for work, costs associated with the use of their personal computer when working
7 from home and or costs associated with the purchase and or maintenance of
8 uniforms/clothing/safety equipment for work. Pursuant to Labor Code section 2802, Aggrieved
9 Employees were entitled to be reimbursed for all reasonable expenses associated with carrying
10 out their job duties. Aggrieved Employees were improperly required to pay for business expenses
11 that are supposed to be the responsibility of the employer, including but not limited to, costs
12 associated with the use of their personal computers/other expenses incurred when working from
13 home and or costs associated with the purchase and or maintenance of uniforms/clothing/safety
14 equipment for work and or cell phone/data plan charges. Among other things, under California
15 law, when employees must use their personal cellphones for work-related purposes, the employer
16 must reimburse them for a reasonable percentage of their cell phone bills. See *Cochran v.*
17 *Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an
18 employee will only need to show that he or she was required to use their personal cellphone for
19 work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Aggrieved Employees
20 were improperly required to use their personal cellphones to communicate and conduct work-
21 related activities, such as but not limited to, to receive text messages and or calls from
22 DEFENDANT regarding, e.g., scheduling. As a pattern and practice, DEFENDANT regularly
23 failed to reimburse and indemnify Aggrieved Employees for business expenses. Pursuant to
24 California Labor Code section 2802, Aggrieved Employees were entitled to be reimbursed for
25 all reasonable expenses associated with carrying out orders by their employer and/or carrying
26 out the duties assigned by their employer. DEFENDANT's failure to provide Aggrieved
27 Employees with full reimbursement for all reasonable expenses associated with carrying out their
28

1 duties required that Aggrieved Employees subsidize and/or carry the burden of business expenses
2 in violation of Labor Code section 2802.

3 **51. Background Checks.** The Labor Code places certain procedural and substantive limits
4 on employers' ability to conduct employee background checks and on how employers can use
5 the information they obtain through those background checks. Labor Code section 1024.5 states
6 that employers, except for financial institutions, may order a credit check only if the individual
7 works (or is applying to work) in certain positions, and Labor Code section 432.7 prohibits an
8 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and
9 even then, certain limitations apply. The California Fair Chance Act (part of the California Fair
10 Employment and Housing Act "FEHA") prohibits employers from asking about/requiring the
11 disclosure of criminal conviction history prior to extending a conditional offer of employment.
12 Additionally, the ICRAA, and the FCRA mandate several requirements prior to and following
13 an employee background check, including but not limited to, identifying an appropriate reason
14 for the background check, a separate consent form with required disclosures and certain
15 formatting requirements, additional forms such as a summary of rights, as well as proper notice
16 of adverse actions taken, among other statutory requirements.

17 **52.** Based on information and belief, DEFENDANT required PLAINTIFF and the
18 Aggrieved Employees to submit to an unlawful criminal and/or financial background check as a
19 condition of obtaining and/or holding employment in violation of Labor Code sections 1024.5,
20 432.7, and or 432.5. Based on information and belief, DEFENDANT also required PLAINTIFF
21 and the Aggrieved Employees to agree in writing to unlawful background checks not in
22 conformance with the requirements of ICRAA and/or FCRA. Based on information and belief,
23 DEFENDANT required PLAINTIFF and the Aggrieved Employees to agree in writing to the
24 provision of ongoing consent throughout the duration of employment for background checks not
25 in conformance with the requirements of CA Civil Code section 1786, *et seq.* and or 15 U.S.C.
26 section 1681, *et seq.*, and or other applicable law and thus required PLAINTIFF and the
27 Aggrieved Employees to agree to unlawful background checks as a condition of obtaining and
28 maintaining employment, in violation of Labor Code section 432.5. Based on further information

1 and belief, DEFENDANT asked impermissible criminal history questions on its employment
2 application and or otherwise required Aggrieved Employees to disclose criminal conviction
3 history prior to extending a conditional offer of employment in violation of the FEHA and
4 required Aggrieved Employees to sign off on/agree in writing to the provision of the unlawful
5 disclosures as a condition of employment, in violation of Labor Code section 432.5. These
6 violations subject DEFENDANT to civil penalties under the Labor Code, including without
7 limitation Labor Code sections 432.5, 432.7 and 2699. Each violation of each Labor Code section
8 and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

9 53. Under the provisions of PAGA and Labor Code sections 201-203, 221-223, 226, 226.7,
10 233-234, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198,
11 1199, 2802, 2810.5 and all relevant sections of the applicable Wage Orders, as well as all
12 interpretations of these laws by California Courts and administrative bodies, as well as any other
13 law that is enforceable through PAGA, DEFENDANT is liable for all statutorily-specified
14 penalties recoverable under PAGA as enumerated in the relevant California Labor Code
15 provisions listed herein, or for default PAGA penalties under Labor Code section 2699(f) for any
16 violation of a Labor Code section without a specified civil penalty.

17 54. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
18 PLAINTIFF is entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs,
19 all in an amount to be proved.

20 **PRAYER**

21 WHEREFORE, PLAINTIFF, prays for judgment against each Defendant, jointly and
22 severally, as follows:

- 23 1. For civil penalties according to proof;
- 24 2. For reasonable attorney's fees and costs of suit; and

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3. For such other and further relief as the Court deems just and proper.

Dated: November 30, 2021

CROSNER LEGAL, P.C.

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