

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Steven Kleinfeld

1 Michael Crosner (SBN 41299)
mike@crosnerlegal.com
2 Zachary Crosner (SBN 272295)
zach@crosnerlegal.com
3 Blake Jones (SBN 211221)
blake@crosnerlegal.com
4 Jamie Serb (SBN 289601)
jamie@crosnerlegal.com
5 **CROSNER LEGAL, PC**
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
6 Tel: (310) 496-5818
Fax: (310) 510-6429

7 Attorneys for RUTHIE BRASWELL,
8 on behalf of herself, the State of California, and others similarly
situated and aggrieved

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

10 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 RUTHIE BRASWELL, on behalf of herself,
12 the State of California, and others similarly
situated and aggrieved,

13
14 Plaintiff,

15 vs.

16
17 AHMC SAN GABRIEL VALLEY
MEDICAL CENTER, LP., a California
limited partnership; AHMC
18 HEALTHCARE, INC., a California
corporation; SAN GABRIEL
19 HEALTHCARE, INC., a California
corporation; SGVMC HEALTHCARE, LP.,
20 a California limited partnership; AHMC
ANAHEIM REGIONAL MEDICAL
21 CENTER LP., a California limited
partnership; AHMC SETON MEDICAL
22 CENTER, LLC; a California limited liability
company; AHMC MONTEREY PARK
23 HOSPITAL, LP, a California limited

Case No.: **21STCV42872**

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

partnership; AHMC GREATER EL MONTE COMMUNITY HOSPITAL LP; a California limited partnership; AHMC GARFIELD MEDICAL CENTER LP; a California limited partnership; AHMC WHITTIER HOSPITAL MEDICAL CENTER LP, a California limited partnership; and DOES 1 to 100, inclusive,

Defendants.

Plaintiff RUTHIE BRASWELL, an individual on behalf of herself, the State of California, and all other Aggrieved Employees, hereby files this Complaint against Defendants AHMC SAN GABRIEL VALLEY MEDICAL CENTER, LP., a California limited partnership; AHMC HEALTHCARE, INC., a California corporation; SAN GABRIEL HEALTHCARE, INC., a California corporation; SGVMC HEALTHCARE, LP., a California limited partnership; AHMC ANAHEIM REGIONAL MEDICAL CENTER LP., a California limited partnership; AHMC SETON MEDICAL CENTER, LLC; a California limited liability company; AHMC MONTEREY PARK HOSPITAL, LP, a California limited partnership; AHMC GREATER EL MONTE COMMUNITY HOSPITAL LP; a California limited partnership; AHMC GARFIELD MEDICAL CENTER LP; a California limited partnership; AHMC WHITTIER HOSPITAL MEDICAL CENTER LP, a California limited partnership; and DOES 1 to 100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes, and on the basis of that information and belief, alleges as follows:

INTRODUCTION

1. This is a representative action by PLAINTIFF RUTHIE BRASWELL on behalf of herself, other similarly Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California’s Private Attorney General Act, Labor Code section 2698 *et. seq.*, to recover civil penalties (75% payable to the Labor and Workforce Development Agency and 25% payable to

1 aggrieved employees) for DEFENDANTS' violations of the California Labor Code as alleged
2 below.

3 **JURISDICTION AND VENUE**

4 2. Jurisdiction is proper in this court by virtue of the California statutes, decisional law
5 and regulations, and the local rules under the Los Angeles Superior Court Rules.

6 3. Venue is proper in this judicial district and the County of Los Angeles pursuant to
7 California Code of Civil Procedure section 395.5 because DEFENDANTS employed PLAINTIFF
8 at one of its facilities located in San Gabriel Valley, California, in the County of Los Angeles, and
9 some of the acts, omissions, and conduct alleged by Plaintiff herein occurred in this county. *See*
10 *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a
11 PAGA action is proper in any county where the defendants committed Labor Code violations against
12 some of its employees).

12 **THE PARTIES**

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

16 4. DEFENDANTS and their managing agents, own, operate, or otherwise manage at
17 least nine (9) hospitals or medical centers throughout Southern California. According to AHMC
18 HEALTHCARE, INC.'s website, DEFENDANTS treat over 200,000 patients annually and employ
19 over 5,000 individuals across their facilities.¹

20 5. PLAINTIFF RUTHIE BRASWELL ("PLAINTIFF" or "PLAINTIFF
21 BRASWELL") is, and at all relevant times was, an individual domiciled in the State of California
22 and a citizen of the State of California who worked as a full-time non-exempt employee for

23 ¹ <https://www.ahmchealth.com/>

1 DEFENDANTS in the State of California.

2 6. PLAINTIFF BRASWELL worked for DEFENDANTS from in or about 2004 until
3 late September 2020 when she went on disability leave. PLAINTIFF worked as a Licensed
4 Vocational Nurse (LVN) in the sub-acute care unit at DEFENDANTS' San Gabriel Valley Medical
5 Center, in the County of Los Angeles.

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

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

22 9. At all relevant times, DEFENDANTS were and are legally responsible for all
23 unlawful conduct, policies, practices, acts and omissions complained of herein. Further,
24 DEFENDANTS are responsible for each of the unlawful acts or omissions complained of herein
25 under the doctrine of respondent superior. The conduct of DEFENDANTS' managers and

1 supervisors was at all relevant times undertaken as employees of DEFENDANTS, acting within the
2 scope of their employment or authority in all of the unlawful activities described herein.

3 **JOINT LIABILITY**

4 10. Under California law, the definition of the term “to employ” is broadly construed
5 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
6 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
7 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49
8 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
9 was to reach situations in which multiple entities control different aspects of the employment
10 relationship. Supervision of the work, in the specific sense of exercising control over how services
11 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
12 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.*

13 11. During PLAINTIFF’s employment with DEFENDANTS, PLAINTIFF and the
14 Aggrieved Employees were jointly employed by these DEFENDANTS for purposes of the Wage
15 Orders, under the alternative definitions of “to employ” adopted by the California Supreme Court
16 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
17 hours and working conditions of PLAINTIFF and the Aggrieved Employees (defined below); (2)
18 suffered or permitted PLAINTIFF and the Aggrieved Employees to work for them; and (3) engaged
PLAINTIFF and the Aggrieved Employees to work for them.

19 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
20 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
21 human resources as a set forth herein. As a result, DEFENDANTS utilized the same unlawful wage
22 and hour policies and practices across all of their locations/facilities and subjected all of the
23 Aggrieved Employees to these same policies and practices regardless of the location(s) or facilities

1 where they worked.

2 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
3 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
4 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
5 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
6 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
7 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
8 Employees. Specifically, upon information and belief, PLAINTIFF alleges that DEFENDANTS
9 created a uniform set of policies, practices and/or procedures concerning, inter alia, hourly and
10 overtime pay, time-keeping practices, meal and rest periods, payment of wages, hours, background
11 check inquiries and practices, and working conditions that were distributed to, and/or applied to
12 PLAINTIFF and the Aggrieved Employees, and further that DEFENDANTS uniformly
13 compensated and controlled the wages of Plaintiff and the Aggrieved Employees in a uniform
14 manner. DEFENDANTS collectively represented to PLAINTIFF and the Aggrieved Employees that
15 each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively retained
16 the right to terminate PLAINTIFF and the Aggrieved Employees' employment with or without
17 cause. Upon information and belief, DEFENDANTS further collectively represented to PLAINTIFF
18 and the Aggrieved Employees in writing the details of their compensation, and the manner in which
19 they were to take meal and rest periods, the procedures required by DEFENDANTS collectively for
20 recordation of hours worked and the policies applicable to PLAINTIFF and the Aggrieved
21 Employees by which DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF
22 and the Aggrieved Employees.

23 14. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
and working conditions of PLAINTIFF and the Aggrieved Employees. As such, DEFENDANTS
collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved

1 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
2 PLAINTIFF seek relief in this Complaint.

3 **INDIVIDUAL LIABILITY UNDER LABOR CODE § 558.1**

4 15. Labor Code section 558.1 permits joint and several liability as to both an individual
5 and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802.
6 DEFENDANTS, at all relevant times, was an employer or person acting on behalf of an employer(s)
7 who violated PLAINTIFF and other Aggrieved Employees' rights by violating various sections of
8 the California Labor Code, as alleged below. The California Legislature defines "other person acting
9 on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing
10 agent of the employer." The "managing agent" definition mirrors that found in California's punitive
11 damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and
12 supporting case law, "managing agents" are all employees who exercise substantial independent
13 authority and judgment in their corporate decision-making such that their decisions ultimately
14 determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67.

15 16. PLAINTIFF intends to further name any unknown individuals responsible for
16 violations arising under Labor Code sections 558 and 558.1 after further discovery.

17 **PAGA ALLEGATIONS**

18 17. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
19 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of
20 California and Aggrieved Employees, regarding violations of the California Labor Code as set forth
21 herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

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

1 18. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
2 section 2699(c), as she was employed by DEFENDANTS during the applicable statutory limitations
3 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
4 PLAINTIFF seeks to recover on behalf of herself, the State of California, and all other current and
5 former Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees
6 and costs. PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all
7 Aggrieved Employees, as she was jointly employed by DEFENDANTS and is thereby affected by
8 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
9 Cal.App.5th 745, 757, a PAGA plaintiff has authority to seek penalties for all known violations
10 committed by the employer – regardless of whether plaintiff experienced all violations personally.
11 *Id.* at 760-761.

12 19. PLAINTIFF gave timely written notice by certified mail to DEFENDANTS of the
13 violation of various provisions of the California Labor Code as alleged in this Complaint and filed
14 notice of the violations online with the Labor and Workforce Development Agency (“LWDA”).

15 20. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
16 violations within the 65-day waiting time period. DEFENDANTS also failed to cure within the time
17 allotted by PAGA.

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

FACTUAL ALLEGATIONS

21 22. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were
22 employed by DEFENDANTS in the State of California as non-exempt employees. DEFENDANTS,
23 at all times, exercised control over PLAINTIFF and the Aggrieved Employees, and suffered and/or
permitted them to work.

1 23. PLAINTIFF worked for DEFENDANTS at San Gabriel Valley Medical Center as a
2 licensed vocation nurse (“LVN”) in the subacute care department as a full-time non-exempt
3 employee from in or about 2004 to the end of September 2020, at which point PLAINTIFF was
4 placed on disability leave. PLAINTIFF is currently employed by DEFENDANTS and continued to
5 receive wage statements from DEFENDANTS even after September 2020. As such, PLAINTIFF
6 continued to suffer one or more of the violations alleged herein.

7 24. As an LVN, PLAINTIFF was typically scheduled to work eight (8) hours per day
8 five (5) days per week.

9 25. **Meal Periods:** PLAINTIFF and the Aggrieved Employees were unable to take
10 timely, thirty-minute uninterrupted meal periods. Based on PLAINTIFF’s and Aggrieved
11 Employees’ work schedules, PLAINTIFF and other Aggrieved employees were entitled to at least
12 one timely, uninterrupted thirty-minute meal period per shift. However, due to the assigned work
13 schedule and/or commentary from supervisors pressuring them to take non-complaint meal periods
14 or skip meal breaks completely, PLAINTIFF and other Aggrieved Employees were often forced to
15 take late meal periods (i.e. after the fifth hour of work) and/or work through their meal periods
16 and/or any purported meal periods were interrupted or cut short due to the nature and constraints of
17 PLAINTIFF and Aggrieved Employees job duties. At other times, Aggrieved Employees were not
18 relieved of all duties during meal periods and at times had to skip meal periods. For example,
19 DEFENDANTS placed a phone in the meal break room and rest break room at San Gabriel Valley
20 Medical Center, so that PLAINTIFF and Aggrieved Employees could be called if one of their
21 patients needed assistance during the Aggrieved Employees’ purported meal break. At other times
22 meal breaks were interrupted by phone calls from management to PLAINTIFF and/or the Aggrieved
23 Employees’ personal cell phone to return to work to assist a patient. As a result, PLAINTIFF and
other Aggrieved Employees were not provided with compliant meal periods.

26. Based on information and belief, the DEFENDANTS time and pay records for the

1 Aggrieved Employees reveal late and/or missed first and second meal periods with no meal period
2 premiums paid during those pay periods.

3 27. Based on further information and belief, DEFENDANTS rounded the start and end
4 times of PLAINTIFF and Aggrieved Employees' meal periods resulting in PLAINTIFF and other
5 Aggrieved Employees not being paid for all hours worked as well as late, shortened, or interrupted
6 meal periods. Based on information and belief, DEFENDANTS did not have a written meal break
7 policy, nor did DEFENDANTS have a compliant meal break practice.

8 28. Despite these unlawful practices, DEFENDANTS implemented a policy and practice
9 of automatically deducting at least thirty minutes per shift for purported meal periods, despite having
10 actual and/or constructive knowledge that PLAINTIFF and the Aggrieved Employees did not
11 receive timely, compliant, uninterrupted meal periods, resulting in underpayment of minimum
12 wages and overtime pay. As a result of the unlawful meal period practices, DEFENDANTS also
13 failed to maintain accurate records of the total hours worked by PLAINTIFF and Aggrieved
Employees.

14 29. Despite not providing PLAINTIFF and other Aggrieved Employees with the meal
15 breaks to which they were legally entitled, DEFENDANTS did not pay premiums for interrupted,
16 short, missed, late and/or on-duty meal periods or failed to pay proper premiums for failure to
17 incorporate all non-discretionary remuneration, including but not limited to shift differential pay,
18 into the regular rate for purposes of calculating the owed meal period premiums.

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

23 31. Per DEFENDANTS' unlawful rest policy and/or practice, PLAINTIFF and other

1 Aggrieved Employees were not adequately informed, authorized, instructed about, nor permitted an
2 opportunity to take proper rest breaks.

3 32. Based on information and belief, DEFENDANTS did not properly authorize and
4 provide PLAINTIFF and other Aggrieved Employees with lawful, uninterrupted rest periods at a
5 rate of every (4) hours worked or major fraction thereof.

6 33. For example, DEFENDANTS had a policy of allowing only a single fifteen-minute
7 rest period per shift despite PLAINTIFF and other Aggrieved Employees regularly working shifts
8 of eight hours or more and thus being entitled to at least two (2) rest periods per shift. Even the
9 single purported rest period was typically interrupted, cut short, on duty, and/or late due to the nature
10 and constraints of PLAINTIFF and other Aggrieved Employees' job duties, staffing constraints,
11 and/or commentary from supervisors pressuring them to take non-compliant rest breaks or stay on
premises in the event a patient needed assistance during the purported rest break.

12 34. PLAINTIFF and other AGGRIEVED EMPLOYEES were pressured to complete
13 their work duties to a designated schedule such that rest breaks were only take once jobs were
14 completed/as time permitted. Upon information and belief, DEFENDANTS did not have a policy
15 in place instructing Aggrieved Employees as to the timing, or duty-free nature of rest periods.

16 35. In addition, PLAINTIFF and the Aggrieved Employees were constantly interrupted
17 during their purported rest break and consequently remained subject to DEFENDANTS' control
18 throughout the rest period. PLAINTIFF and the Aggrieved Employees were not permitted to take
19 duty-free rest breaks and/or were not permitted to leave the premises during rest periods so as to be
20 available to assist a patient if needed. For example, the rest break rooms at San Gabriel Valley
21 Medical Center contained a company phone that rang during rest breaks when a patient needed
22 assistance. As such, PLAINTIFF and Aggrieved Employees' rest breaks were interrupted, cut short,
23 or not provided, and/or were taken on premises in the event they needed to complete a work-related

1 task during a rest period.

2 36. Moreover, upon information and belief, DEFENDANTS failed to pay premium
3 wages at the regular rate of compensation to the Aggrieved Employees for these on-duty, missed,
4 late, shortened or interrupted rest periods.

5 37. **Minimum and Overtime Wages**: PLAINTIFF and the Aggrieved Employees were
6 also regularly required to perform off-the-clock work by virtue of DEFENDANTS' above-described
7 automatic-deduction policy for meal periods. On information and belief, the work time reported by
8 Aggrieved Employees was automatically deducted for at least 30 minutes of wages every day they
9 worked for DEFENDANTS for meal breaks not taken, interrupted, or not relieved of all duties and
10 employer control. Upon information and belief, DEFENDANTS also maintained a policy and
11 practice of time-rounding, that as applied systematically deprived PLAINTIFF and Aggrieved
12 Employees of compensable time because the time-rounding system implemented by
13 DEFENDANTS would almost always, if not always, understate the actual time worked. Based on
14 information and belief, DEFENDANTS rounded hours worked to the nearest quarter hour, resulting
15 in the underpayment of minimum and overtime wages. DEFENDANTS' time-shaving/time-
16 rounding policies and practices as applied worked to detrimentally shave and round time off from
17 PLAINTIFF's and Aggrieved Employees' workdays. Upon information and belief, DEFENDANTS
18 had actual or constructive knowledge that its time-shaving/time-rounding policy resulted in
19 underpaying PLAINTIFF and Aggrieved Employees the wages they were owed.

20 38. Furthermore, PLAINTIFF and other Aggrieved Employees were suffered or
21 permitted to start working before clocking in and/or to continue working after clocking out. For
22 example, several times a week, PLAINTIFF estimates she worked at least fifteen to forty minutes
23 after clocking out in order to finish tending to patients or complete other work tasks such as
completing written reports. This off-the-clock work was not compensated and resulted in minimum
and overtime wage violations.

1 39. DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to
2 complete other off-the-clock work such as continued education related to medical licensing and/or
3 mandatory company trainings. PLAINTIFF and Aggrieved Employees were not paid for all off-the-
4 clock work, thereby resulting in unpaid minimum and overtime wages.

5 40. Moreover, when PLAINTIFF and Aggrieved Employees were paid overtime,
6 DEFENDANTS failed to include all forms of non-discretionary remuneration, including but not
7 limited to shift differential pay, into the regular rate of pay for purposes of calculating the correct
8 amount of overtime owed during pay periods in which overtime was worked and non-discretionary
9 remuneration earned. This resulted in the underpayment of overtime wages.

10 41. Moreover, upon information and belief, DEFENDANTS sometimes paid the
11 Aggrieved Employees multiple rates of pay in one pay period for the same kind of work but failed
12 to average the rates of pay when calculating overtime. Under California law, "[w]here two rates of
13 pay are paid during a workweek, the California method for determining the regular rate of pay for
14 calculating overtime in that workweek mirrors the federal method, based upon the weighted average
15 of all hourly rates paid." DLSE Manual 49.2.5 (citing 29 CFR § 778.115). This "weighted average"
16 method provides, "[w]here an employee in a single workweek works at two or more different types
17 of work for which different non-overtime rates of pay (of not less than the applicable minimum
18 wage) have been established, their regular rate for that week is the weighted average of such rates.
19 That is, the total earnings (except statutory exclusions) are computed to include his compensation
20 during the workweek from all such rates, and are then divided by the total number of hours worked
21 at all jobs. . ." 29 CFR § 778.115. DEFENDANTS' failure to average the rates of pay when
22 calculating overtime resulted in underpaid overtime at times, as well as inaccurate and incomplete
23 wage statements.

 42. Based on information and belief, DEFENDANTS had actual or constructive
knowledge that its rounding of shift and meal period times, auto-deduction/ other off-the-clock work

1 policies and practices and failure to provide off-duty meal periods resulted in the underpayment of
2 minimum and overtime wages owed to PLAINTIFF and other Aggrieved Employees.

3 43. **Failure to Keep accurate records:** Based on the herein described off-the-clock
4 work and failure to provide compliant, off-duty meal and rest periods, PLAINTIFF alleges that
5 DEFENDANTS not only violated minimum and overtime wage laws, but also failed to maintain
6 accurate records as to PLAINTIFF's and the Aggrieved Employees' true shift and meal period start
7 and end times, as required under California law and/or the applicable IWC Wage Order(s).

8 44. **Standard Conditions of Labor:** DEFENDANTS also violated Labor Code Section
9 1198 and 1199, which together, make it unlawful to employ individuals under conditions or labor
10 that are prohibited by the Wage Orders or any provision within Part 4, Chapter 1 of the Labor Code,
11 including section 1174, 1197, and 1198, or order or ruling of the commission. DEFENDANTS'
12 violations with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and
13 overtime wages result in separate violations of sections 1198 and 1199, which subject
14 DEFENDANTS to civil penalties under Labor Code section 1197.1 and 2699.1.

15 45. **Refusal to Make Payment:** DEFENDANTS also violated Labor Code section 216
16 by failing to pay PLAINTIFF and the Aggrieved Employees for all hours worked at the proper wage
17 rate and by failing to pay PLAINTIFF and all Aggrieved Employees an additional hour of pay for
18 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.

19 46. **Statutory Wage Violations:** Similarly, DEFENDANTS violated Labor Code
20 section 223 which makes it unlawful for an employer to secretly pay wages lower than required by
21 statute while purporting to pay legal wages. DEFENDANTS willfully and systematically denied
22 PLAINTIFF and other Aggrieved Employees minimum wage compensation for all hours worked
23 which resulted in the payment of less than statutorily required wages to them. DEFENDANTS acted
with the intent to deprive them of statutory wages including, but not limited to minimum and

1 overtime wages.

2 47. **Business Expenses:** DEFENDANTS also failed to compensate PLAINTIFF and the
3 Aggrieved Employees for business-related expenses incurred in direct consequence of the discharge
4 of their duties or of their obedience to the directions of the employer. PLAINTIFF and the Aggrieved
5 Employees were improperly required to provide and maintain work tools that are supposed to be the
6 responsibility of the employer. At all relevant times hereto, DEFENDANTS shifted the costs of
7 doing business onto PLAINTIFF and other AGGRIEVED EMPLOYEES, by requiring them to pay
8 for its business expenses, including but not limited to, use of PLAINTIFF's mobile phone and data
9 usage and costs associated with uniform purchase and or maintenance. For example, Aggrieved
10 Employees were required to purchase their own uniforms, some of which contained
11 DEFENDANTS' logo, including but not limited to uniforms worn by Aggrieved Employees
12 working in the operating room. PLAINTIFF was also required to pay for her own fingerprinting
13 service when completing licensing requirements or submitting to unlawful background checks as
14 required by DEFENDANTS. DEFENDANTS failed to reimburse PLAINTIFF and Aggrieved
15 Employees for these costs incurred in the purchase and/or maintenance of such work equipment,
16 including but not limited to uniforms, personal cell phones, maintaining cell phone data and plans,
17 and other expenses incurred in direct consequence of the discharge of their duties or of their
18 obedience to DEFENDANTS' directions.

19 48. These expenses were necessary expenditures incurred by PLAINTIFF and
20 Aggrieved Employees in performing their job duties. Despite being aware of these business
21 expenses, DEFENDANTS failed to reimburse PLAINTIFF and other Aggrieved Employees for
22 such business expenses in violation of California Labor Code section 2802.

23 49. **Wage Statement Violations:** During the relevant period, DEFENDANTS also
24 failed to provide PLAINTIFF and the Aggrieved Employees with accurate wage statements that
25 complied with Labor Code section 226. PLAINTIFF's paystubs did not accurately reflect, *inter-*

1 *alia*, the total hours worked for the pay period. Wage statements provided by DEFENDANTS failed
2 to indicate the “total hours worked” by the PLAINTIFF and all Aggrieved Employees (by virtue of
3 the automatic deduction for on duty/shortened/ interrupted meal periods, time-rounding practices,
4 off-the-clock work described herein, and failure to pay premium wages at the regular rate of
5 compensation). As a result, the wage statements provided to PLAINTIFF and the Aggrieved
6 Employees were not accurate and did not include all of the statutorily required information, such as,
7 but not limited to, the total hours worked. Accordingly, DEFENDANTS violated Labor Code § 226.

8 50. **Violation of California Labor Code §§ 245-248.5:** Throughout the relevant time
9 period, DEFENDANTS also violated California’s sick leave laws, section 245 *et. seq*, 246, and
10 247.5. DEFENDANTS failed to provide proper sick leave to PLAINTIFF and other Aggrieved
11 Employees, due to, including but not limited to, DEFENDANTS’ failure to account for the actual
12 hours worked (by virtue of the auto-deduction and time rounding policies and failure to pay for all
13 hours worked, as described herein) and or failure to incorporate all forms of non-discretionary
14 remuneration, including but not limited to, shift pay differential, into the sick pay calculation. In
15 addition, DEFENDANTS failed to maintain accurate records of used sick leave and the balance of
16 paid sick leave left to the employees, which affected Aggrieved Employees’ intelligent exercise of
17 their paid sick leave.

18 51. DEFENDANTS further failed to put PLAINTIFF and the Aggrieved Employees on
19 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
20 Code section 2810.5 notice.

21 52. Throughout the relevant time period, DEFENDANTS failed to maintain accurate
22 records and provide notice of the accrued sick leave amount or balance left for PLAINTIFF and all
23 Aggrieved Employees, and thus affected their intelligent exercise of their paid sick leave. For
example, on April 23, 2021, DEFENANTS provided PLAINTIFF with a wage statement that did
not list the balance of PLAINTIFF’s available sick leave. Upon information and belief,

1 DEFENDANTS did not provide PLAINTIFF with a separate writing that delineated PLAINTIFF's
2 accrued or available sick leave. Upon information and belief, DEFENDANTS similarly failed to
3 provide the Aggrieved Employees with written notice of their available sick leave as required by
4 Labor Code section 246.

5 53. But for this failure, Aggrieved Employees would have used their paid sick leave at
6 least prior to their respective separation, or on several occasions after receiving notice of the
7 available sick leave.

8 54. **Final Pay Violations:** Given the above violations, DEFENDANTS also violated
9 Labor Code sections 201 and 202, which together require employers to pay all wages immediately
10 upon discharge and within 72 hours of an employees' resignation. DEFENDANTS failed to timely
11 pay Aggrieved Employees who are no longer employed by DEFENDANTS all wages that were due
12 and owing upon termination or resignation. Upon separation of employment, Aggrieved Employees'
13 final paycheck were not timely provided, and Aggrieved Employees' final paychecks, once
14 provided, did not include all remuneration owed as they were devoid of, including but not limited
15 to: (1) all owed minimum wages; (2) all owed overtime wages; (3) all owed premium wages and (4)
16 all owed sick pay. These violations subject DEFENDANTS to civil penalties under Labor Code
section 203, 210, and/or 256.

17 55. **Background Check Violations:** In addition to the above requirements, the
18 California Labor Code places certain procedural and substantive limits on employers' ability to
19 conduct employee background checks and on how employers can use the information they obtain
20 through these background checks.

21 56. Upon information and belief, DEFENDANTS required PLAINTIFF and the
22 Aggrieved Employees to submit or agree to submit to unlawful criminal and/or financial background
23 checks as a condition of obtaining and/or holding employment in violation of Labor Code sections
1024.5, 432.7, and/or 432.5. DEFENDANTS also required PLAINTIFF and the Aggrieved

1 Employees to agree in writing to unlawful background checks not in conformance with the
2 requirements of the Investigative Consumer Reporting Agencies Act, Civil Code §§ 1786, *et seq.*
3 (“ICRAA”), and the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.* (“FCRA”), and thus
4 required Aggrieved Employees to agree (in writing) to an unlawful background check as a condition
5 of employment, in violation of Labor Code section 432.5.

6 57. Upon information and belief, DEFENDANTS, in violation of California law,
7 including but not limited to Labor Code section 432.7 and the Fair Chance Act, asked about arrests
8 not resulting in convictions on its employment application, asked about convictions prior to
9 extending an offer of employment to Aggrieved Employees and/or otherwise impermissibly
10 inquired into criminal history on its employment application in violation of California law. By
11 asking about arrests not resulting in convictions, DEFENDANTS violated Labor Code 432.7. By
12 asking about convictions at the application phase or prior to extending an employment offer,
13 DEFENDANTS violated California’s Fair Chance Act, and thereby violated Labor Code 432.5 by
14 unlawfully requiring the Aggrieved Employees to agree in writing to disclose arrests or convictions
15 as a condition of employment.

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

18 **FIRST CAUSE OF ACTION**

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

20 **2698, *ET SEQ.***

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

23 59. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

Failure to Keep Accurate Records

60. California Labor Code § 1174 requires employers to keep “accurate and complete”

1 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
2 IWC Wage Order 4-2001 (and all applicable IWC Wage Orders), § 7 similarly requires employers
3 to keep time records reflecting the times during which all owed meal periods were provided each
4 day.

5 61. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
6 time records. Upon information and belief, DEFENDANTS knowingly and intentionally failed to
7 maintain records as required under California Labor Code §§ 226 and 1174, and IWC Wage Order
8 No. 4-2001, § 7, including but not limited to the following records: total daily hours worked,
9 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
10 began and ended each work period, time records of meal periods, and accurate itemized wage
11 statements.

12 62. DEFENDANTS have failed and continue to fail to keep accurate and complete
13 records showing total hours worked by PLAINTIFF and Aggrieved Employees by virtue of
14 DEFENDANTS' automatic meal break deductions, time rounding policies and practices as
15 described above, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and control
16 during unpaid meal breaks, and by virtue of DEFENDANTS' failure to keep record of all hours
17 worked by PLAINTIFF and Aggrieved Employees, including but not limited to off-the-clock work,
18 such as pre-shift and post shift work and other off-the-clock work, including but not limited to time
19 spent completing mandatory continued education or trainings.

20 63. DEFENDANTS further failed and continue to fail, to record the true start and end
21 times of PLAINTIFF and Aggrieved Employee's meal periods. Based on indication and belief,
22 during the relevant period, DEFENDANTS implemented a policy and practice of simply recording
23 (and deducting for) a thirty-minute meal period per shift (whether a compliant meal period had
been taken or not and irrespective of whether that meal period was interrupted or not) without
accurately recording the start and end times of those meal periods, in violation of California's

1 record-keeping laws.

2 64. DEFENDANTS' failure to keep "accurate and complete" payroll records for
3 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and Wage
4 Order 4-2001 (And All Applicable IWC Orders), § 7. These violations subject DEFENDANTS to
5 civil penalties under Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor
6 Code section and Wage Order provision, for each Aggrieved Employee, results in a separate civil
7 penalty

8 **Meal Period Violations**

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

13 66. During this meal period of not less than thirty (30) minutes, the employee is to be
14 completely free of the employer's control and must not perform any work for the employer. If the
15 employee does perform work for the employer during the thirty (30) minute meal period, the
16 employee has not been provided a meal period in accordance with the law. Also, the employee is
17 to be compensated for any work performed during the thirty (30) minute meal period. In addition,
18 an employer may not employ an employee for a work period of more than ten (10) hours per day
19 without providing the employee with another meal period of not less than thirty (30) minutes, and
20 it must be provided before the end of the 10th hour of work. *Id.*

21 67. Under California law, meal periods can be waived, but only under the following
22 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
23 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

1 than twelve (12) hours, the required second meal period may be waived by mutual consent of the
2 employer and employee, but only if the first meal period was not waived. *Id.* PLAINTIFF and the
3 Aggrieved Employees regularly worked at least eight hours per shift. Upon information and belief,
4 PLAINTIFF did not waive her meal periods at any time throughout her employment with
5 DEFENDANTS.

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

12 69. Employers covered by the Wage Orders have an obligation to both (1) relieve their
13 employees for at least one meal period for shifts over five hours (see above), and (2) to record
14 having done so. If the employer fails to properly record a valid meal period, it is presumed no meal
15 period was provided. "[...T]ime records showing noncompliant meal periods raise a rebuttable
16 presumption of meal period violations..." *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58,
17 62. *See* IWC Wage Order 4-2001, §7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker,*
18 *supra*, 53 Cal.4th 1004, 1052-1053, citing §7(A)(3) ("If an employer's records show no meal period
19 for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved
20 of duty and no meal period was provided").

21 70. PLAINTIFF and the Aggrieved Employees were unable to take timely, thirty-minute
22 uninterrupted meal periods. Based on PLAINTIFF's and Aggrieved Employees' work schedules,
23 PLAINTIFF and other Aggrieved employees were entitled to at least one timely, uninterrupted
thirty-minute meal period per shift. However, due to the assigned work schedule and/or commentary
from supervisors pressuring them to take non-complaint meal periods or skip meal breaks

1 completely, PLAINTIFF and other Aggrieved Employees were often forced to take late meal
2 periods (i.e. after the fifth hour of work) and/or work through their meal periods and/or any
3 purported meal periods were interrupted or cut short due to the nature and constraints of PLAINTIFF
4 and Aggrieved Employees job duties. For example, DEFENDANTS placed a phone in the meal
5 break rooms at San Gabriel Valley Medical Center, so that PLAINTIFF and Aggrieved Employees
6 can be called if one of their patients needed assistance during the Aggrieved Employees' purported
7 meal break. At other times meal breaks were interrupted by phone calls from management to
8 PLAINTIFF or the Aggrieved Employees' personal cell phone to return to work to assist a patient
9 or complete other work tasks. As a result, PLAINTIFF and Aggrieved Employees were not provided
10 with compliant meal periods.

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

15 72. Despite these unlawful practices, DEFENDANTS implemented a policy and practice
16 of automatically deducting at least thirty minutes per shift for purported meal periods, despite having
17 actual and/or constructive knowledge that PLAINTIFF and the Aggrieved Employees did not
18 receive timely, compliant, uninterrupted meal periods.

19 73. Based on information and belief, DEFENDANTS did not have a compliant written
20 meal break policy, nor did DEFENDANTS have a compliant policy in practice. Liability for the
21 Aggrieved Employees can be established by evidence that an employer adopted a uniform corporate
22 break policy that failed to give full effect to California law and the applicable Wage Order
23 requirements. The fact that employees may legally waive meal breaks does not affect this result.
Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004.

74. Despite not providing PLAINTIFF and other Aggrieved Employees with the meal

1 breaks to which they were legally entitled, DEFENDANTS did not pay premiums for missed or
2 unlawful meal breaks and/or failed to pay proper premiums for failure to incorporate all non-
3 discretionary remuneration, including but not limited to shift differential pay, into the regular rate
4 for purposes of calculating the owed meal period premiums.

5 75. The aforementioned conduct results in violations of Labor Code sections 226.7, 512,
6 and 1198-1199, and all applicable IWC Wage Orders, including §11(A) and (C). These violations
7 subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all
8 applicable IWC Wage Orders, §20.

9 **Rest Period Violations**

10 76. Under the IWC Wage Orders and Labor Code section 226.7, an employer must
11 authorize or permit an employee to take a net ten-minute rest period for every four hours worked,
12 or major fraction thereof, and such rest periods must be in the middle of the four-hour period insofar
13 as practicable. The rest period requirement obligates employers to permit and authorize employees
14 to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
15 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
16 Cal.5th 257, 269. If the employer fails to provide any required rest periods or fails to provide a
17 fully compliant net 10-minute rest break wherein the employee is fully relieved of all duties and all
18 employer control, the employer must pay the employee one hour of pay at the employee's regular
19 rate of compensation for each workday the employer did not provide a legally required and/or fully
20 compliant rest period.

21 77. At all times mentioned herein, DEFENDANTS had policies and procedures that
22 failed to authorize and/or permit net ten minutes of rest based upon the total hours worked daily at
23 the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof worked. As a
result, PLAINTIFF and the other Aggrieved Employees did not receive all legally required rest
periods, as DEFENDANTS did not authorize nor permit all required rest periods in strict

1 accordance to, and in compliance with, the timing requirements of all applicable Wage Orders.

2 78. For example, DEFENDANTS had a policy of allowing only a single fifteen-minute
3 rest period per shift despite PLAINTIFF and other Aggrieved Employees regularly working shifts
4 of eight hours or more and thus being entitled to at least two (2) rest periods per shift. Even the
5 single purported rest period was typically interrupted, cut short, on duty, and/or late due to the nature
6 and constraints of PLAINTIFF and other Aggrieved Employees' job duties, staffing constraints,
7 and/or commentary from supervisors pressuring them to take non-compliant rest breaks or stay on
8 premises in the event a patient needed assistance during the purported rest break.

9 79. Despite not providing lawful rest periods during the PAGA Period, DEFENDANTS
10 failed to pay PLAINTIFF and other Aggrieved employees with an additional hour of pay at the
11 employee's regular rate of compensation for each missed or unlawful rest period.

12 80. In addition, PLAINTIFF and the Aggrieved Employees remained subject to
13 DEFENDANTS' control throughout the purported rest period as they were often unable to take
14 duty-free rest breaks. PLAINTIFF and the Aggrieved Employees were constantly interrupted by
15 DEFENDANTS' work-related communications and/or tasks. For example, the rest break rooms at
16 San Gabriel Valley Medical Center contained a company phone that rang during rest breaks when
17 a patient needed assistance. As such, PLAINTIFF and Aggrieved Employees' rest breaks were
18 interrupted, cut short, or not provided.

19 81. As a result of these interruptions and the need for Aggrieved Employees to attend to
20 patients if needed, PLAINTIFF and the Aggrieved Employees had to stay on premises during the
21 purported rest break. "One cannot square the practice of compelling employees to remain at the
22 ready, tethered by time and policy to particular locations or communications devices, with the
23 requirement to relieve employees of all work duties and employer control during 10-minute rest
periods. [emphasis added]." *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269.

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

6 83. By failing to provide lawful ten (10) minute rest periods for every four (4) hours or
7 major fraction thereof, and by failing to provide compensation at the employee's regular rate of
8 compensation for unlawful rest periods in lieu thereof, DEFENDANTS willfully violated Labor
9 Code sections 226.7, 512, and 1198-1199, and IWC Wage Order 4-2001, §12. These violations
10 subject DEFENDANTS to civil penalties under Labor Code §§ 558 and 2699, and Wage Order 4-
2001, §20.

11 **Minimum and Overtime Wage Violations**

12 84. 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. California law also provides
15 employees in California must be paid overtime, equal to 1.5 times the employee's regular rate of
16 pay for all hours worked in excess of 40 per week or 8 per day and must be paid double wages for
17 all hours worked in excess of 12 hours per day. *See* Labor Code 510 and the applicable Wage Order
18 section 3. Employers must pay overtime equal to double the regular hourly rate of pay for each
19 hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8)
20 hours on the seventh consecutive day of work in a work week. *Ibid.* PLAINTIFF and the Aggrieved
21 Employees regularly worked hours, including overtime hours, for which they were not
compensated by DEFENDANTS as required by California law.

22 85. As alleged herein, PLAINTIFF and the Aggrieved Employees regularly worked
23 hours for which they were not compensated. DEFENDANTS' excessive expectation that

1 Aggrieved Employees continue performing work duties at the cost of not allowing them to observe
2 legally mandated uninterrupted, duty-free meal periods resulted in DEFENDANTS requiring
3 PLAINTIFF and Aggrieved Employees to deduct 30 minutes of time to appear as if they actually
4 took uninterrupted, duty-free meal periods as well as failure to be properly compensated as
5 mandated. But such deducted work time expended by PLAINTIFF and Aggrieved Employees
6 qualified as “hours worked” within the meaning of California Labor Code and IWC Wage Orders.

7 86. Moreover, based on information and belief, DEFENDANTS maintained a policy and
8 practice of time-rounding that as applied systematically deprived PLAINTIFF and Aggrieved
9 Employees of compensable time because the time-rounding system implemented by
10 DEFENDANTS would almost always, if not always, understate actual compensable work time.
11 Through the operation of DEFENDANTS’ time-shaving/ time-rounding system, PLAINTIFF and
12 other Aggrieved Employees were systematically deprived of compensable time, resulting in
13 minimum wage and overtime violations.

14 87. Furthermore, PLAINTIFF and other Aggrieved Employees were suffered or
15 permitted to start working before clocking in and/or to continue working after clocking out. For
16 example, several times a week, PLAINTIFF estimates that she worked at least fifteen to forty
17 minutes after clocking out in order to finish tending to patients or complete other work tasks such
18 as completing written reports. This off-the-clock work was not compensated and resulted in
19 minimum and overtime wage violations.

20 88. DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to
21 complete other off-the-clock work including but not limited to trainings on continued education
22 related to medical licensing or company policies. PLAINTIFF and Aggrieved Employees were not
23 paid for all off-the-clock work thereby resulting in unpaid minimum and overtime wages.

89. DEFENDANTS’ automatic-deduction policy for meal periods, their time-shaving
and rounding system, and mandatory off-the-clock work resulted in violations of California’s

1 minimum and overtime wage laws and other violations described below.

2 90. Based on information and belief, DEFENDANTS had actual or constructive
3 knowledge that its time rounding and auto-deduction and other off-the-clock work policies and
4 practices and failure to provide off-duty meal periods resulted in the underpayment of minimum and
5 overtime wages owed to PLAINTIFF and the Aggrieved Employees.

6 91. Moreover, when PLAINTIFF and Aggrieved Employees were paid overtime,
7 DEFENDANTS failed to include all forms of non-discretionary remuneration, including but not
8 limited to shift differential pay, into the regular rate of pay for purposes of calculating the correct
9 amount of overtime owed during pay periods in which overtime was worked and non-discretionary
10 remuneration earned. This resulted in the underpayment of overtime wages.

11 92. Additionally, upon information and belief, DEFENDANTS sometimes paid the
12 Aggrieved Employees multiple rates of pay in one pay period for the same kind of work but failed
13 to average the rates of pay when calculating overtime. Under California law, "[w]here two rates of
14 pay are paid during a workweek, the California method for determining the regular rate of pay for
15 calculating overtime in that workweek mirrors the federal method, based upon the weighted average
16 of all hourly rates paid." DLSE Manual 49.2.5 (citing 29 CFR § 778.115). This "weighted average"
17 method provides, "[w]here an employee in a single workweek works at two or more different types
18 of work for which different non-overtime rates of pay (of not less than the applicable minimum
19 wage) have been established, their regular rate for that week is the weighted average of such rates.
20 That is, the total earnings (except statutory exclusions) are computed to include his compensation
21 during the workweek from all such rates, and are then divided by the total number of hours worked
22 at all jobs. . ." 29 CFR § 778.115. DEFENDANTS' failure to average the rates of pay when
23 calculating overtime resulted in underpaid overtime at times, as well as inaccurate and incomplete
wage statements.

93. These violations subject DEFENDANTS to civil penalties under Labor Code

1 sections 1197.1, 1198, 1199, 558, 558.1, 218.5, 2699, and Wage Order 4-2001 (and all applicable
2 IWC Wage Orders).

3 **Statutory Wage Violations**

4 94. California Labor Code section 223 makes it unlawful for an employer to secretly pay
5 wages lower than required by statute while purporting to pay legal wages. As described above,
6 DEFENDANTS willfully and systematically denied PLAINTIFF and other Aggrieved Employees
7 of all earned minimum and overtime wages for all hours worked which resulted in the payment of
8 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
9 statutory wages, including, but not limited to, overtime wages and minimum wages, to which they
10 were entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other
11 Aggrieved Employees lower wages than those they were entitled to while purporting that
12 PLAINTIFF and other Aggrieved Employees were properly paid. As a result, PLAINTIFF and
13 other Aggrieved Employees are entitled to recover penalties, attorney's fees, costs, and interest
thereon, pursuant to Labor Code § 2699(f)-(g).

14 **Refusal to Make Payment**

15 95. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
16 and payable and/or denial of the validity of any claim to wages due. DEFENDANTS violated/
17 continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
18 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
19 meal/rest period not provided/that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995)
20 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil penalties under
21 Labor Code section 225.5.²

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 **Standard Conditions of Labor Violations:**

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

9 **Business Expense Violations**

10 97. California law requires employers to indemnify their employees for all necessary
11 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
12 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802(a) and Wage Order
13 1-2001, § 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or
14 losses' shall include all reasonable costs, including, but not limited to, attorneys' fees incurred by
the employee enforcing the rights granted by this section."

15 98. PLAINTIFF and other Aggrieved Employees were improperly required to provide
16 and maintain work tools that are supposed to be DEFENDANTS' responsibility. Among other
17 things, under California law, when tools or equipment are required by the employer or are necessary
18 to the performance of a job, such tools and equipment shall be provided and maintained by
19 employer, except that an employee whose wages are at least two (2) times the minimum wage may
20 be required to provide and maintain hand tools and equipment customarily required by the trade or
21 craft. *See* applicable IWC Wage Order, § 9 (b). At all relevant times hereto, DEFENDANTS shifted
22 their costs of doing business onto its employees by requiring PLAINTIFF and other Aggrieved
23 Employees to pay for its business expenses, including but not limited to, purchasing and/or
maintaining work uniforms, clothing, and shoes, purchasing and maintaining personal cell phones

1 and data plans, and costs associated with DEFENDANTS' requirement that Aggrieved Employees
2 be fingerprinted for employment purposes.

3 99. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
4 PLAINTIFF and other Aggrieved Employees for such business expenses in violation of California
5 Labor Code § 2802, which requires employers to "indemnify his or her employee for all necessary
6 expenditures and losses incurred by employees." In turn, there constitutes a PAGA violation based
7 on a violation of California Labor Code § 2802 and the applicable Wage Order.

8 **Wage Statement Violations**

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

19 101. Labor Code § 226(a) requires DEFENDANTS to accurately report PLAINTIFF and
20 the Aggrieved Employee's total hours worked. Each wage statement DEFENDANTS provided to
21 PLAINTIFF and the Aggrieved Employees failed to accurately itemize, in violation of Labor Code
22 § 226(a), PLAINTIFF and the Aggrieved Employees' total hours worked (due to DEFENDANTS'
23 rounding/time shaving, interrupted meal periods, and other mandatory off-the-clock work
described herein).

102. As a result of DEFENDANTS' violations of various Labor Code and Wage Order

1 provisions, as discussed herein, DEFENDANTS failed to provide accurate wage statements with
2 respect to multiple categories set forth in Labor Code section 226, causing confusion to
3 PLAINTIFF and the Aggrieved Employees over whether they were compensated for all hours
4 worked. PLAINTIFF and Aggrieved Employees were injured by DEFENDANTS' failure to
5 provide accurate wage statements. As a result, these violations subject DEFENDANTS to civil
6 penalties under Labor Code § 226.3.

7 **Sick Leave Violations**

8 103. Throughout the relevant time period, DEFENDANTS either failed to provide any
9 sick leave pay whatsoever to PLAINTIFF and other Aggrieved Employees or failed to properly
10 accrue paid sick leave due to DEFENDANTS' failure to account for actual hours worked (by virtue
11 of the off-the-clock work/rounding/time-shaving practices described herein). DEFENDANTS
12 further failed to give PLAINTIFF and other Aggrieved Employees notice of their paid sick leave
13 rights. In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the
14 balance of paid sick leave left to the employees, which affected PLAINTIFF and Aggrieved
15 Employees' intelligent exercise of their paid sick leave. These practices violated California's sick
16 leave laws, Labor Code section 245, *et seq.*

17 104. In violation of Labor Code § 247.5, DEFENDANTS also failed to maintain records
18 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and other
19 Aggrieved Employees, permitting the presumption that Plaintiff and other Aggrieved Employees
20 were entitled to the maximum number of hours accruable at the time of their respective
21 terminations. DEFENDANTS further failed to comply with Labor Code section 246 by failing to
22 provide its employees with wage statements or separate documents showing the amount of paid
23 sick leave available, or paid time off leave in lieu of sick leave. For example, on April 23, 2021,
DEFENANTS provided PLAINTIFF with a wage statement that did not list the balance of
PLAINTIFF's available sick leave. Upon information and belief, DEFENDANTS did not provide

1 PLAINTIFF with a separate writing that delineated PLAINTIFF's accrued or available sick leave.
2 Upon information and belief, DEFENDANTS similarly failed to provide the Aggrieved Employees
3 with written notice of their available sick leave as required by Labor Code section 246.

4 105. PLAINTIFF requests all appropriate relief under the PAGA and these statutes,
5 including but not limited to the restitution of earned paid sick leave that could have been used, but
6 was not due to DEFENDANTS sole failure to institute such a paid sick leave entitlement or paid
7 sick leave bank as required by California law.

8 106. Accordingly, PLAINTIFF and other Aggrieved Employees are entitled to injunctive
9 relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. PLAINTIFF
10 requests all relief pursuant to the aforementioned code provisions, including but not limited to
11 Labor Code §§ 233 and 234, which incorporates the paid sick leave requirements.

12 **Untimely Payment of Final Wages**

13 107. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
14 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
15 and payable immediately." California Labor Code section 202(a) provides, in relevant part, that
16 "[i]f an employee not having a written contract for a definite period quits his or her employment,
17 his or her wages shall become due and payable not later than 72 hours thereafter, unless the
18 employee has given 72 hours previous notice of his or her intention to quit, in which case the
19 employee is entitled to his or her wages at the time of quitting." California Labor Code section 203
20 provides that when an employer willfully fails to pay wages owed, in accordance with sections 201
21 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the
22 same rate until paid or until action is commenced; but the wages shall not continue for more
23 than thirty (30) days.

108. DEFENDANTS failed to timely pay Aggrieved Employees who are no longer
employed by DEFENDANTS all wages that were due and owing upon termination or resignation.

1 Upon separation of employment, Aggrieved Employees' final paycheck were not timely provided,
2 and Aggrieved Employees' final paychecks, once provided did not include the following: (1) all
3 owed minimum wages, (2) all owed overtime wages, (3) all owed premium wages, and (4) all owed
4 sick pay. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
5 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
6 256.

7 109. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
8 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
9 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
10 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
11 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.

12 **Background Check Violations**

13 110. The California Labor Code places certain procedural and substantive limits on
14 employers' ability to conduct employee background checks and on how employers can use the
15 information they obtain through those background checks. Labor Code section 1024.5 states that
16 employers, except for financial institutions, may order a credit check only if the individual works
17 (or is applying to work) in certain positions (e.g., managerial positions, financially-related
18 positions, and certain government positions). Labor Code Section 432.7 prohibits an employer
19 from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then,
20 certain limitations apply. Additionally, the Investigative Consumer Reporting Agencies Act
21 (ICRAA- CA Civil Code section 1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15
22 U.S.C. section 1681, et seq.) mandate several requirements prior to and following an employee
23 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

1 requirements, additional forms such as a summary of rights, as well as proper notice of adverse
2 actions taken, among other statutory requirements.

3 111. Upon information and belief, DEFENDANTS required PLAINTIFF and the
4 Aggrieved Employees to submit or agree to submit to unlawful criminal and/or financial background
5 checks as a condition of obtaining and/or holding employment in violation of Labor Code sections
6 1024.5, 432.7, and/or 432.5. DEFENDANTS required PLAINTIFF and the Aggrieved Employees
7 to agree in writing to background checks not in conformance with the requirements of CA Civil
8 Code section 1786, *et seq.*, and/or 15 U.S.C. section 1681, *et seq.*, and thus required Aggrieved
9 Employees to agree to an unlawful background check as a condition of employment, in violation of
10 Labor Code section 432.5.

11 112. DEFENDANTS knew that requiring PLAINTIFF and Aggrieved Employees to
12 agree in writing to these criminal and/or financial background checks as a condition of obtaining
13 and/or holding employment was unlawful.

14 113. As such, DEFENDANTS violated Labor Code 432.5 by requiring Aggrieved
15 Employees to agree in writing to illegal background checks. *See* Labor Code section 432.5 stating
16 that “no employer ... shall require an employee or applicant for employment to agree in writing, to
17 any term or condition which is known by such employer ... to be prohibited by law.”

18 114. Upon information and belief, DEFENDANTS violated California law, including but
19 not limited to Labor Code section 432.7 and California’s Fair Chance Act, by requiring Aggrieved
20 Employees to disclose arrests not resulting in convictions on its employment application, asking
21 about convictions prior to extending an offer of employment, and/or otherwise impermissibly
22 inquired into criminal history on its employment application in violation of California law. By
23 asking about arrests not resulting in convictions, DEFENDANTS violated Labor Code 432.7. Labor
Code 432.6 provides, “An employer... shall not ask an applicant for employment to disclose,
through any written form or verbally, information concerning an arrest or detention that did not

1 result in conviction...”

2 115. Under California Government Code section 12952 (California’s “Fair Chance Act”)
3 provides: “... it is an unlawful employment practice for an employer with five or more employees
4 to do any of the following: (1) To include on any application of employment, before the employer
5 makes a conditional offer of employment to the applicant, any question that seeks the disclosure of
6 an applicant’s conviction history.” Upon information and belief, DEFENDANTS asked Aggrieved
7 Employees to disclose convictions in writing as part of the application process and prior to extending
8 an offer of employment. By asking about convictions at the application phase or prior to extending
9 an employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
10 Labor Code 432.5 by unlawfully requiring the Aggrieved Employees to agree in writing to disclose
11 arrests or convictions as a condition of employment.

12 116. Each of the above violations of each Labor Code section and Wage Order provision
13 results in a *separate* civil penalty, for each aggrieved employee for each pay period during which
14 the referenced statutes and Wage Order provisions were violated.³

15 117. Under the provisions of PAGA and the above mentioned Labor Code sections,
16 including but not limited to Labor Code section 201-202, 203, 210, 225.5, 226, 226.3, 226.7, 245,
17 247, 248, 248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197,
18 1197.1, 1198, 1199, 2699, 2802, 2810.5 and all applicable Wage Orders as well as all
19 interpretations of these laws by California Courts and administrative bodies, as well as any other
20 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

22 ³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab.
23 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 4-2001, §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”).

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.

118. 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.

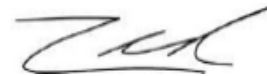
PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of himself,
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: November 19, 2021

CROSNER LEGAL, P.C.



Zachary Crosner, Esq.
Attorneys for Plaintiff,
RUTHIE BRASWELL