

1 MICHAEL CROSNER (SBN 41299)
2 mike@crosnerlegal.com
3 ZACHARY CROSNER (SBN 272295)
4 zach@crosnerlegal.com
5 BLAKE JONES (SBN 211221)
6 blake@crosnerlegal.com
7 CHAD SAUNDERS (SBN 257810)
8 chad@crosnerlegal.com
9 **CROSNER LEGAL, P.C.**
10 9440 Santa Monica Blvd. Suite 301
11 Beverly Hills, CA 90210
12 Tel: (310) 496-5818
13 Fax: (310) 510-6429

14 *Attorneys for Plaintiff*

15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18

19 RUTHIE BRASWELL, on behalf of
20 herself, the State of California, and others
21 similarly situated and aggrieved,

22 Plaintiff,

23 v.

24 AHMC SAN GABRIEL VALLEY
25 MEDICAL CENTER, LP., a California
26 limited partnership; and AHMC
27 HEALTHCARE, INC., a California
28 corporation,

Defendants.

Case No. 2:21-cv-09959-MWF-AGR

**FIRST AMENDED COMPLAINT
FOR VIOLATIONS OF THE
CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS
GENERAL ACT OF 2004 [Cal.
Lab. Code § 2698, et seq.]**

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1 Plaintiff RUTHIE BRASWELL (“PLAINTIFF”), an individual on behalf of
2 herself, the State of California, and all other Aggrieved Employees, hereby files this
3 Complaint against Defendants AHMC SAN GABRIEL VALLEY MEDICAL
4 CENTER, LP., a California limited partnership; and AHMC HEALTHCARE, INC., a
5 California corporation; (collectively referred to herein as “DEFENDANTS”).
6 PLAINTIFF is informed and believes, and on the basis of that information and belief,
7 alleges as follows:

8 **INTRODUCTION**

9 1. This is a representative action by PLAINTIFF on behalf of herself, other
10 similarly Aggrieved Employees and the State of California against DEFENDANTS,
11 pursuant to the California Labor Code Private Attorney General Act, Labor Code
12 section 2698 *et. seq.*, to recover civil penalties (75% payable to the Labor and
13 Workforce Development Agency and 25% payable to aggrieved employees) for
14 DEFENDANTS’ violations of the California Labor Code as alleged below.

15 **JURISDICTION**

16 2. DEFENDANTS removed this action to this Court from the Superior Court
17 of California, County of Los Angeles, on December 28, 2021, alleging that this Court
18 has subject matter jurisdiction based on 29 U.S.C. § 185(a), 28 U.S.C. § 1331, and 28
19 U.S.C. § 1337.

20 3. PLAINTIFF disputes that this Court has subject matter jurisdiction over
21 PLAINTIFF’S claims, which are made pursuant to the California Labor Code Private
22 Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*) (“PAGA”), and seek
23 only civil penalties for DEFENDANTS’ California Labor Code violation, as alleged
24 herein.

25 **THE PARTIES**

26 4. DEFENDANT AHMC HEALTHCARE, INC. and its managing agents,
27 own, operate, or otherwise manage at least nine (9) hospitals or medical centers
28 throughout Southern California, including San Gabriel Valley Medical Center where

1 PLAINTIFF worked. According to AHMC HEALTHCARE, INC.'s website, AHMC
2 affiliated hospitals treat over 200,000 patients annually and employ over 5,000
3 individuals across their facilities.¹

4 4. PLAINTIFF is, and at all relevant times was, an individual domiciled in
5 the State of California and a citizen of the State of California who worked as a full-time
6 non-exempt employee at the San Gabriel Valley Medical Center.

7 5. PLAINTIFF worked at the San Gabriel Valley Medical Center from in or
8 about 2004 until late September 2020 when she went on disability leave. PLAINTIFF
9 worked as a Licensed Vocational Nurse (LVN) in the sub-acute care unit at the San
10 Gabriel Valley Medical Center, in the County of Los Angeles.

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

23 7. At all relevant times, DEFENDANTS were and are legally responsible for
24 all unlawful conduct, policies, practices, acts and omissions complained of herein.
25 Further, DEFENDANTS are responsible for each of the unlawful acts or omissions
26 complained of herein under the doctrine of respondent superior. The conduct of
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28 ¹ <https://www.ahmchealth.com/>

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

4 **PAGA ALLEGATIONS**

5 8. PLAINTIFF brings this action under the Private Attorneys General Act of
 6 2004, Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf
 7 of the State of California and Aggrieved Employees, regarding violations of the
 8 California Labor Code as set forth herein as to all Aggrieved Employees. Said
 9 "Aggrieved Employees" include:

10 All current and former non-exempt employees who worked
 11 either directly or via a staffing agency at DEFENDANTS'
 12 San Gabriel Valley Medical Center at any time from one year
 13 plus 65 days from filing of the initial Complaint through the
 14 present ("PAGA Period").

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

27 10. PLAINTIFF gave timely written notice by certified mail to
 28 DEFENDANTS of the violation of various provisions of the California Labor Code as
 alleged in this Complaint and filed notice of the violations online with the Labor and

1 Workforce Development Agency (“LWDA”).

2 11. The LWDA did not provide notice of its intention to investigate
3 DEFENDANTS’ violations within the 65-day waiting time period. DEFENDANTS
4 also failed to cure within the time allotted by PAGA.

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

9 **FACTUAL ALLEGATIONS**

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

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

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

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

15 17. Based on information and belief, the DEFENDANTS time and pay records
16 for the Aggrieved Employees reveal late and/or missed first and second meal periods
17 with no meal period premiums paid during those pay periods.

18 18. Based on further information and belief, DEFENDANTS rounded the start
19 and end times of PLAINTIFF and Aggrieved Employees' meal periods resulting in
20 PLAINTIFF and other Aggrieved Employees not being paid for all hours worked as
21 well as late, shortened, or interrupted meal periods. Based on information and belief,
22 DEFENDANTS did not have a written meal break policy, nor did DEFENDANTS have
23 a compliant meal break practice.

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

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

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

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

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

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

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

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

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

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

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

18 30. DEFENDANTS also required PLAINTIFF and other Aggrieved
19 Employees to complete other off-the-clock work such as continued education related to
20 medical licensing and/or mandatory company trainings. PLAINTIFF and Aggrieved
21 Employees were not paid for all off-the-clock work, thereby resulting in unpaid
22 minimum and overtime wages.

23 31. Moreover, when PLAINTIFF and Aggrieved Employees were paid
24 overtime, DEFENDANTS failed to include all forms of non-discretionary
25 remuneration, including but not limited to shift differential pay, into the regular rate of
26 pay for purposes of calculating the correct amount of overtime owed during pay periods
27 in which overtime was worked and non-discretionary remuneration earned. This
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1 resulted in the underpayment of overtime wages.

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

17 33. Based on information and belief, DEFENDANTS had actual or
18 constructive knowledge that its rounding of shift and meal period times, auto-deduction/
19 other off-the-clock work policies and practices and failure to provide off-duty meal
20 periods resulted in the underpayment of minimum and overtime wages owed to
21 PLAINTIFF and other Aggrieved Employees.

22 34. **Failure to Keep accurate records:** Based on the herein described off-the-
23 clock work and failure to provide compliant, off-duty meal and rest periods,
24 PLAINTIFF alleges that DEFENDANTS not only violated minimum and overtime
25 wage laws, but also failed to maintain accurate records as to PLAINTIFF's and the
26 Aggrieved Employees' true shift and meal period start and end times, as required under
27 California law and/or the applicable IWC Wage Order(s).
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3 35. **Standard Conditions of Labor:** DEFENDANTS also violated Labor
4 Code Section 1198 and 1199, which together, make it unlawful to employ individuals
5 under conditions or labor that are prohibited by the Wage Orders or any provision within
6 Part 4, Chapter 1 of the Labor Code, including section 1174, 1197, and 1198, or order
7 or ruling of the commission. DEFENDANTS' violations with respect to meal periods,
8 rest periods, recordkeeping provisions, minimum wages and overtime wages result in
9 separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil
10 penalties under Labor Code section 1197.1 and 2699.1.

11 36. **Refusal to Make Payment:** DEFENDANTS also violated Labor Code
12 section 216 by failing to pay PLAINTIFF and the Aggrieved Employees for all hours
13 worked at the proper wage rate and by failing to pay PLAINTIFF and all Aggrieved
14 Employees an additional hour of pay for each meal or rest period not provided or that
15 was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137,
16 1154-1155.

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

24 38. **Business Expenses:** DEFENDANTS also failed to compensate
25 PLAINTIFF and the Aggrieved Employees for business-related expenses incurred in
26 direct consequence of the discharge of their duties or of their obedience to the directions
27 of the employer. PLAINTIFF and the Aggrieved Employees were improperly required
28 to provide and maintain work tools that are supposed to be the responsibility of the

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

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

20 40. **Wage Statement Violations:** During the relevant period, DEFENDANTS
21 also failed to provide PLAINTIFF and the Aggrieved Employees with accurate wage
22 statements that complied with Labor Code section 226. PLAINTIFF's paystubs did not
23 accurately reflect, *inter-alia*, the total hours worked for the pay period. Wage statements
24 provided by DEFENDANTS failed to indicate the "total hours worked" by the
25 PLAINTIFF and all Aggrieved Employees (by virtue of the automatic deduction for on
26 duty/shortened/ interrupted meal periods, time-rounding practices, off-the-clock work
27 described herein, and failure to pay premium wages at the regular rate of compensation).
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1 As a result, the wage statements provided to PLAINTIFF and the Aggrieved Employees
2 were not accurate and did not include all of the statutorily required information, such
3 as, but not limited to, the total hours worked. Accordingly, DEFENDANTS violated
4 Labor Code § 226.

5 41. **Violation of California Labor Code §§ 245-248.5:** Throughout the
6 relevant time period, DEFENDANTS also violated California's sick leave laws, section
7 245 *et. seq.*, 246, and 247.5. DEFENDANTS failed to provide proper sick leave to
8 PLAINTIFF and other Aggrieved Employees, due to, including but not limited to,
9 DEFENDANTS' failure to account for the actual hours worked (by virtue of the auto-
10 deduction and time rounding policies and failure to pay for all hours worked, as
11 described herein) and or failure to incorporate all forms of non-discretionary
12 remuneration, including but not limited to, shift pay differential, into the sick pay
13 calculation. In addition, DEFENDANTS failed to maintain accurate records of used
14 sick leave and the balance of paid sick leave left to the employees, which affected
15 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

19 43. Throughout the relevant time period, DEFENDANTS failed to maintain
20 accurate records and provide notice of the accrued sick leave amount or balance left for
21 PLAINTIFF and all Aggrieved Employees, and thus affected their intelligent exercise
22 of their paid sick leave. For example, on April 23, 2021, DEFENDANTS provided
23 PLAINTIFF with a wage statement that did not list the balance of PLAINTIFF's
24 available sick leave. Upon information and belief, DEFENDANTS did not provide
25 PLAINTIFF with a separate writing that delineated PLAINTIFF's accrued or available
26 sick leave. Upon information and belief, DEFENDANTS similarly failed to provide the
27 Aggrieved Employees with written notice of their available sick leave as required by
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1 Labor Code section 246.

2 44. But for this failure, Aggrieved Employees would have used their paid sick
3 leave at least prior to their respective separation, or on several occasions after receiving
4 notice of the available sick leave.

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

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

20 47. Upon information and belief, DEFENDANTS required PLAINTIFF and
21 the Aggrieved Employees to submit or agree to submit to unlawful criminal and/or
22 financial background checks as a condition of obtaining and/or holding employment in
23 violation of Labor Code sections 1024.5, 432.7, and/or 432.5. DEFENDANTS also
24 required PLAINTIFF and the Aggrieved Employees to agree in writing to unlawful
25 background checks not in conformance with the requirements of the Investigative
26 Consumer Reporting Agencies Act, Civil Code §§ 1786, *et seq.* ("ICRAA"), and the
27 Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.* ("FCRA"), and thus required
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1 Aggrieved Employees to agree (in writing) to an unlawful background check as a
2 condition of employment, in violation of Labor Code section 432.5.

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

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

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18 **FIRST CAUSE OF ACTION**
19 **VIOLATION OF CALIFORNIA LABOR CODE PRIVATE ATTORNEYS**
20 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, *ET SEQ.***
21 **(On behalf of Plaintiff, Aggrieved Employees, and the State of California against**
22 **all Defendants)**

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

25 **Failure to Keep Accurate Records**

26 51. California Labor Code § 1174 requires employers to keep "accurate and
27 complete" payroll records showing, among other things, the hours worked daily by all
28 non-exempt employees. IWC Wage Order 4-2001 (and all applicable IWC Wage
Orders), § 7 similarly requires employers to keep time records reflecting the times

1 during which all owed meal periods were provided each day.

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

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

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

25 55. DEFENDANTS' failure to keep "accurate and complete" payroll records
26 for PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198,
27 1199, and Wage Order 4-2001 (And All Applicable IWC Orders), § 7. These violations
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1 subject DEFENDANTS to civil penalties under Labor Code §§ 558.1, 226.6, 1174.5
2 and 2699. Each violation of each Labor Code section and Wage Order provision, for
3 each Aggrieved Employee, results in a separate civil penalty

4 **Meal Period Violations**

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

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

20 58. Under California law, meal periods can be waived, but only under the
21 following circumstances: (1) if an employee's total work period in a day is over five
22 (5) hours but no more than six (6) hours, the required meal period may be waived by
23 mutual consent of the employer and employee, and (2) if an employee's total work
24 period in a day is over ten (10) hours but no more than twelve (12) hours, the required
25 second meal period may be waived by mutual consent of the employer and employee,
26 but only if the first meal period was not waived. *Id.* PLAINTIFF and the Aggrieved
27 Employees regularly worked at least eight hours per shift. Upon information and belief,
28

1 PLAINTIFF did not waive her meal periods at any time throughout her employment
2 with DEFENDANTS.

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

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

20 61. PLAINTIFF and the Aggrieved Employees were unable to take timely,
21 thirty-minute uninterrupted meal periods. Based on PLAINTIFF's and Aggrieved
22 Employees' work schedules, PLAINTIFF and other Aggrieved employees were entitled
23 to at least one timely, uninterrupted thirty-minute meal period per shift. However, due
24 to the assigned work schedule and/or commentary from supervisors pressuring them to
25 take non-complaint meal periods or skip meal breaks completely, PLAINTIFF and other
26 Aggrieved Employees were often forced to take late meal periods (i.e. after the fifth
27 hour of work) and/or work through their meal periods and/or any purported meal periods
28

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

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

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

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

26 65. Despite not providing PLAINTIFF and other Aggrieved Employees with
27 the meal breaks to which they were legally entitled, DEFENDANTS did not pay
28

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

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

9 **Rest Period Violations**

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

22 68. At all times mentioned herein, DEFENDANTS had policies and
23 procedures that failed to authorize and/or permit net ten minutes of rest based upon the
24 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
25 or major fraction thereof worked. As a result, PLAINTIFF and the other Aggrieved
26 Employees did not receive all legally required rest periods, as DEFENDANTS did not
27 authorize nor permit all required rest periods in strict accordance to, and in compliance
28

1 with, the timing requirements of all applicable Wage Orders.

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

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

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

22 72. As a result of these interruptions and the need for Aggrieved Employees
23 to attend to patients if needed, PLAINTIFF and the Aggrieved Employees had to stay
24 on premises during the purported rest break. "One cannot square the practice of
25 compelling employees to remain at the ready, tethered by time and policy to particular
26 locations or communications devices, with the requirement to relieve employees of all
27 work duties and employer control during 10-minute rest periods. [emphasis added]."
28

1 *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269.

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

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

14 **Minimum and Overtime Wage Violations**

15 75. California law provides that employees in California must be paid for all
16 hours worked, up to 40 per week or 8 per day, at a regular rate that is no less than the
17 mandated minimum wage. *See* Labor Code section 1197 and the applicable wage order.
18 California law also provides employees in California must be paid overtime, equal to
19 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 per
20 week or 8 per day and must be paid double wages for all hours worked in excess of 12
21 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3.
22 Employers must pay overtime equal to double the regular hourly rate of pay for each
23 hour worked beyond twelve (12) hours per workday and for all hours worked in excess
24 of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*
25 PLAINTIFF and the Aggrieved Employees regularly worked hours, including
26 overtime hours, for which they were not compensated by DEFENDANTS as required
27 by California law.
28

1 76. As alleged herein, PLAINTIFF and the Aggrieved Employees regularly
2 worked hours for which they were not compensated. DEFENDANTS' excessive
3 expectation that Aggrieved Employees continue performing work duties at the cost of
4 not allowing them to observe legally mandated uninterrupted, duty-free meal periods
5 resulted in DEFENDANTS requiring PLAINTIFF and Aggrieved Employees to deduct
6 30 minutes of time to appear as if they actually took uninterrupted, duty-free meal
7 periods as well as failure to be properly compensated as mandated. But such deducted
8 work time expended by PLAINTIFF and Aggrieved Employees qualified as "hours
9 worked" within the meaning of California Labor Code and IWC Wage Orders.

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

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

24 79. DEFENDANTS also required PLAINTIFF and other Aggrieved
25 Employees to complete other off-the-clock work including but not limited to trainings
26 on continued education related to medical licensing or company policies. PLAINTIFF
27 and Aggrieved Employees were not paid for all off-the-clock work thereby resulting in
28

1 unpaid minimum and overtime wages.

2 80. DEFENDANTS' automatic-deduction policy for meal periods, their time-
3 shaving and rounding system, and mandatory off-the-clock work resulted in violations
4 of California's minimum and overtime wage laws and other violations described below.

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

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

16 83. Additionally, upon information and belief, DEFENDANTS sometimes
17 paid the Aggrieved Employees multiple rates of pay in one pay period for the same kind
18 of work but failed to average the rates of pay when calculating overtime. Under
19 California law, "[w]here two rates of pay are paid during a workweek, the California
20 method for determining the regular rate of pay for calculating overtime in that
21 workweek mirrors the federal method, based upon the weighted average of all hourly
22 rates paid." DLSE Manual 49.2.5 (citing 29 CFR § 778.115). This "weighted average"
23 method provides, "[w]here an employee in a single workweek works at two or more
24 different types of work for which different non-overtime rates of pay (of not less than
25 the applicable minimum wage) have been established, their regular rate for that week is
26 the weighted average of such rates. That is, the total earnings (except statutory
27 exclusions) are computed to include his compensation during the workweek from all
28

1 such rates, and are then divided by the total number of hours worked at all jobs. . ." 29
 2 CFR § 778.115. DEFENDANTS' failure to average the rates of pay when calculating
 3 overtime resulted in underpaid overtime at times, as well as inaccurate and incomplete
 4 wage statements.

5 84. These violations subject DEFENDANTS to civil penalties under Labor
 6 Code sections 1197.1, 1198, 1199, 558, 558.1, 218.5, 2699, and Wage Order 4-2001
 7 (and all applicable IWC Wage Orders).

8 **Statutory Wage Violations**

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

21 **Refusal to Make Payment**

22 86. Labor Code section 216 declares unlawful an employer's refusal to pay
 23 wages due and payable and/or denial of the validity of any claim to wages due.
 24 DEFENDANTS violated/ continue to violate this section by failing to pay PLAINTIFF
 25 and Aggrieved Employees for all hours worked at the proper wage rate and by failing
 26 to pay an additional hour of pay for each meal/rest period not provided/that was invalid.
 27 *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.
 28

1 These violations subject DEFENDANTS to civil penalties under Labor Code section
2 225.5.²

3 **Standard Conditions of Labor Violations:**

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

12 **Business Expense Violations**

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

20 89. PLAINTIFF and other Aggrieved Employees were improperly required to
21 provide and maintain work tools that are supposed to be DEFENDANTS'
22 responsibility. Among other things, under California law, when tools or equipment are
23 required by the employer or are necessary to the performance of a job, such tools and
24 equipment shall be provided and maintained by employer, except that an employee
25 whose wages are at least two (2) times the minimum wage may be required to provide
26

27 ² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 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 and maintain hand tools and equipment customarily required by the trade or craft. *See*
2 applicable IWC Wage Order, § 9 (b). At all relevant times hereto, DEFENDANTS
3 shifted their costs of doing business onto its employees by requiring PLAINTIFF and
4 other Aggrieved Employees to pay for its business expenses, including but not limited
5 to, purchasing and/or maintaining work uniforms, clothing, and shoes, purchasing and
6 maintaining personal cell phones and data plans, and costs associated with
7 DEFENDANTS' requirement that Aggrieved Employees be fingerprinted for
8 employment purposes.

9
10 90. Despite being aware of these business expenses, DEFENDANTS failed to
11 reimburse PLAINTIFF and other Aggrieved Employees for such business expenses in
12 violation of California Labor Code § 2802, which requires employers to "indemnify
13 his or her employee for all necessary expenditures and losses incurred by employees."
14 In turn, there constitutes a PAGA violation based on a violation of California Labor
15 Code § 2802 and the applicable Wage Order.

16 **Wage Statement Violations**

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

28 92. Labor Code § 226(a) requires DEFENDANTS to accurately report

1 PLAINTIFF and the Aggrieved Employee's total hours worked. Each wage statement
 2 DEFENDANTS provided to PLAINTIFF and the Aggrieved Employees failed to
 3 accurately itemize, in violation of Labor Code § 226(a), PLAINTIFF and the
 4 Aggrieved Employees' total hours worked (due to DEFENDANTS' rounding/time
 5 shaving, interrupted meal periods, and other mandatory off-the-clock work described
 6 herein).

7 93. As a result of DEFENDANTS' violations of various Labor Code and Wage
 8 Order provisions, as discussed herein, DEFENDANTS failed to provide accurate wage
 9 statements with respect to multiple categories set forth in Labor Code section 226,
 10 causing confusion to PLAINTIFF and the Aggrieved Employees over whether they
 11 were compensated for all hours worked. PLAINTIFF and Aggrieved Employees were
 12 injured by DEFENDANTS' failure to provide accurate wage statements. As a result,
 13 these violations subject DEFENDANTS to civil penalties under Labor Code § 226.3.

14 **Sick Leave Violations**

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

25 95. In violation of Labor Code § 247.5, DEFENDANTS also failed to maintain
 26 records documenting the hours worked and paid sick days accrued and used by
 27 PLAINTIFF and other Aggrieved Employees, permitting the presumption that Plaintiff
 28

1 and other Aggrieved Employees were entitled to the maximum number of hours
2 accruable at the time of their respective terminations. DEFENDANTS further failed to
3 comply with Labor Code section 246 by failing to provide its employees with wage
4 statements or separate documents showing the amount of paid sick leave available, or
5 paid time off leave in lieu of sick leave. For example, on April 23, 2021, DEFENDANTS
6 provided PLAINTIFF with a wage statement that did not list the balance of
7 PLAINTIFF's available sick leave. Upon information and belief, DEFENDANTS did
8 not provide PLAINTIFF with a separate writing that delineated PLAINTIFF's accrued
9 or available sick leave. Upon information and belief, DEFENDANTS similarly failed
10 to provide the Aggrieved Employees with written notice of their available sick leave
11 as required by Labor Code section 246.

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

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

21 **Untimely Payment of Final Wages**

22 98. California Labor Code section 201(a) provides, in relevant part, that "[i]f
23 an employer discharges an employee, the wages earned and unpaid at the time of
24 discharge are due and payable immediately." California Labor Code section 202(a)
25 provides, in relevant part, that "[i]f an employee not having a written contract for a
26 definite period quits his or her employment, his or her wages shall become due and
27 payable not later than 72 hours thereafter, unless the employee has given 72 hours
28

1 previous notice of his or her intention to quit, in which case the employee is entitled to
 2 his or her wages at the time of quitting.” California Labor Code section 203 provides
 3 that when an employer willfully fails to pay wages owed, in accordance with sections
 4 201 and 202, the wages of the employee shall continue as a penalty from the due date
 5 thereof at the same rate until paid or until an action is commenced; but the wages shall
 6 not continue for more than thirty (30) days.

7 99. DEFENDANTS failed to timely pay Aggrieved Employees who are no
 8 longer employed by DEFENDANTS all wages that were due and owing upon
 9 termination or resignation. Upon separation of employment, Aggrieved Employees’
 10 final paycheck were not timely provided, and Aggrieved Employees’ final paychecks,
 11 once provided did not include the following: (1) all owed minimum wages, (2) all owed
 12 overtime wages, (3) all owed premium wages, and (4) all owed sick pay. As a result,
 13 DEFENDANTS violated Labor Code sections 201, 202, and 203. These violations
 14 subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
 15 256.

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

23 **Background Check Violations**

24 101. The California Labor Code places certain procedural and substantive limits
 25 on employers’ ability to conduct employee background checks and on how employers
 26 can use the information they obtain through those background checks. Labor Code
 27 section 1024.5 states that employers, except for financial institutions, may order a
 28

1 credit check only if the individual works (or is applying to work) in certain positions
2 (e.g., managerial positions, financially-related positions, and certain government
3 positions). Labor Code Section 432.7 prohibits an employer from asking applicants
4 about past arrest(s) unless they resulted in conviction(s) and even then, certain
5 limitations apply. Additionally, the Investigative Consumer Reporting Agencies Act
6 (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act
7 (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and
8 following an employee background check, including but not limited to identifying an
9 appropriate reason for the background check, a separate consent form with required
10 disclosures and certain formatting requirements, additional forms such as a summary
11 of rights, as well as proper notice of adverse actions taken, among other statutory
12 requirements.

13 102. Upon information and belief, DEFENDANTS required PLAINTIFF and
14 the Aggrieved Employees to submit or agree to submit to unlawful criminal and/or
15 financial background checks as a condition of obtaining and/or holding employment in
16 violation of Labor Code sections 1024.5, 432.7, and/or 432.5. DEFENDANTS required
17 PLAINTIFF and the Aggrieved Employees to agree in writing to background checks
18 not in conformance with the requirements of CA Civil Code section 1786, *et seq.*, and/or
19 15 U.S.C. section 1681, *et seq.*, and thus required Aggrieved Employees to agree to an
20 unlawful background check as a condition of employment, in violation of Labor Code
21 section 432.5.

22 103. DEFENDANTS knew that requiring PLAINTIFF and Aggrieved
23 Employees to agree in writing to these criminal and/or financial background checks as
24 a condition of obtaining and/or holding employment was unlawful.

25 104. As such, DEFENDANTS violated Labor Code 432.5 by requiring
26 Aggrieved Employees to agree in writing to illegal background checks. *See* Labor Code
27 section 432.5 stating that “no employer ... shall require an employee or applicant for
28

1 employment to agree in writing, to any term or condition which is known by such
2 employer ... to be prohibited by law.”

3 105. Upon information and belief, DEFENDANTS violated California law,
4 including but not limited to Labor Code section 432.7 and California’s Fair Chance Act,
5 by requiring Aggrieved Employees to disclose arrests not resulting in convictions on its
6 employment application, asking about convictions prior to extending an offer of
7 employment, and/or otherwise impermissibly inquired into criminal history on its
8 employment application in violation of California law. By asking about arrests not
9 resulting in convictions, DEFENDANTS violated Labor Code 432.7. Labor Code 432.6
10 provides, “An employer... shall not ask an applicant for employment to disclose,
11 through any written form or verbally, information concerning an arrest or detention that
12 did not result in conviction...”

13 106. Under California Government Code section 12952 (California’s “Fair
14 Chance Act”) provides: “... it is an unlawful employment practice for an employer with
15 five or more employees to do any of the following: (1) To include on any application
16 of employment, before the employer makes a conditional offer of employment to the
17 applicant, any question that seeks the disclosure of an applicant’s conviction history.”
18 Upon information and belief, DEFENDANTS asked Aggrieved Employees to disclose
19 convictions in writing as part of the application process and prior to extending an offer
20 of employment. By asking about convictions at the application phase or prior to
21 extending an employment offer, DEFENDANTS violated California’s Fair Chance Act,
22 and thereby violated Labor Code 432.5 by unlawfully requiring the Aggrieved
23 Employees to agree in writing to disclose arrests or convictions as a condition of
24 employment.

25 107. Each of the above violations of each Labor Code section and Wage Order
26 provision results in a *separate* civil penalty, for each aggrieved employee for each pay
27
28

1 period during which the referenced statutes and Wage Order provisions were violated.³

2 108. Under the provisions of PAGA and the above mentioned Labor Code
3 sections, including but not limited to Labor Code section 201-202, 203, 210, 225.5,
4 226, 226.3, 226.7, 245, 247, 248, 248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1,
5 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, 2802, 2810.5 and all
6 applicable Wage Orders as well as all interpretations of these laws by California Courts
7 and administrative bodies, as well as any other law that is enforceable through PAGA,
8 DEFENDANTS are liable for the following penalties:

- 9 a. All statutorily-specified penalties recoverable under PAGA as
10 enumerated in the relevant California Labor Code provisions listed
11 herein only if permitted by the PAGA statute, pursuant to Labor Code
12 section 2699(a); and
13
14 b. Default PAGA penalties for any violation of the enumerated list of
15 Labor Code violations without a civil penalty recoverable under the
16 PAGA, all in the default amounts provided by Labor Code section
17 2699(f).
18
19 c. The proper measure of penalties under PAGA is the number of
20 violations, whether those violations were committed as against
21 PLAINTIFF or any Aggrieved Employee, whether a party to this action
22 or not.

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

26 ³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab.
27 Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee
28 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”).

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: March 28, 2022

CROSNER LEGAL, P.C.

/s/ Chad Saunders
Chad Saunders, Esq.

Attorneys for Plaintiff,
RUTHIE BRASWELL