

1 ZACHARY CROSNER (SBN 272295)
2 zach@crosnerlegal.com
3 CHAD SAUNDERS (SBN 257810)
4 chad@crosnerlegal.com
5 **CROSNER LEGAL, P.C.**
6 9440 Santa Monica Blvd. Suite 301
7 Beverly Hills, CA 90210
8 Tel: (310) 496-5818
9 Fax: (310) 510-6429
10 *Attorneys for Plaintiff Ruthie Braswell*

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

AHMC SAN GABRIEL VALLEY
MEDICAL CENTER, LP., a California
limited partnership; AHMC
HEALTHCARE, INC., a California
corporation, AHMC ANAHEIM
REGIONAL MEDICAL CENTER LP, a
California limited partnership; AHMC
SETON MEDICAL CENTER LLC, a
California limited partnership; 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

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

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

1 limited partnership; and AHMC
2 WHITTIER HOSPITAL MEDICAL
3 CENTER LP, a California limited
4 partnership,

5 Defendants.

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 Second Amended Complaint against Defendants AHMC SAN GABRIEL VALLEY
4 MEDICAL CENTER, LP., a California limited partnership; and AHMC
5 HEALTHCARE, INC., a California corporation; AHMC ANAHEIM REGIONAL
6 MEDICAL CENTER LP, a California limited partnership; AHMC SETON MEDICAL
7 CENTER LLC, a California limited partnership; AHMC MONTEREY PARK
8 HOSPITAL LP, a California limited partnership; AHMC GREATER EL MONTE
9 COMMUNITY HOSPITAL LP, a California limited partnership; AHMC GARFIELD
10 MEDICAL CENTER LP, a California limited partnership; and AHMC WHITTIER
11 HOSPITAL MEDICAL CENTER LP, a California limited partnership; (collectively
12 referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes, and on
13 the basis of that information and belief, alleges as follows:

14 **INTRODUCTION**

15 1. This is a representative action by PLAINTIFF on behalf of herself, other
16 similarly Aggrieved Employees and the State of California against DEFENDANTS,
17 pursuant to the California Labor Code Private Attorney General Act, Labor Code section
18 2698 *et. seq.*, to recover civil penalties (75% payable to the Labor and Workforce
19 Development Agency and 25% payable to aggrieved employees) for DEFENDANTS’
20 violations of the California Labor Code as alleged below.

21 **JURISDICTION**

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

26 3. PLAINTIFF disputes that this Court has subject matter jurisdiction over
27 PLAINTIFF’S claims, which are made pursuant to the California Labor Code Private
28 Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*) (“PAGA”), and seek

1 only civil penalties for DEFENDANTS' California Labor Code violation, as alleged
2 herein.

3
4 **THE PARTIES**

5 4. Defendant AHMC SAN GABRIEL VALLEY MEDICAL CENTER, LP.
6 is a California limited partnership that at all relevant times was authorized to do business
7 in California and is doing business in California.

8 5. Defendant AHMC HEALTHCARE, INC. is a California corporation that
9 at all relevant times was authorized to do business in California and is doing business in
10 California.

11 6. Defendant AHMC ANAHEIM REGIONAL MEDICAL CENTER LP is
12 a California limited partnership that at all relevant times was authorized to do business
13 in California and is doing business in California.

14 7. Defendant AHMC SETON MEDICAL CENTER LLC is a California
15 limited liability company that at all relevant times was authorized to do business in
16 California and is doing business in California.

17 8. Defendant AHMC MONTEREY PARK HOSPITAL LP is a California
18 limited partnership that at all relevant times was authorized to do business in California
19 and is doing business in California.

20 9. Defendant AHMC GREATER EL MONTE COMMUNITY HOSPITAL
21 LP, is a California limited partnership that at all relevant times was authorized to do
22 business in California and is doing business in California.

23 10. Defendant AHMC GARFIELD MEDICAL CENTER LP, is a California
24 limited partnership that at all relevant times was authorized to do business in California
25 and is doing business in California.

26 11. Defendant AHMC WHITTIER HOSPITAL MEDICAL CENTER LP, is a
27 California limited partnership that at all relevant times was authorized to do business in
28 California and is doing business in California.

1 12. DEFENDANT AHMC HEALTHCARE, INC. and its managing agents,
2 own, operate, or otherwise manage hospitals or medical centers throughout Southern
3 California, including San Gabriel Valley Medical Center where PLAINTIFF worked.
4 According to AHMC HEALTHCARE, INC.' website, AHMC affiliated hospitals treat
5 over 200,000 patients annually and employ over 5,000 individuals across their facilities.¹

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

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

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

25 7. At all relevant times, DEFENDANTS were and are legally responsible for
26 all unlawful conduct, policies, practices, acts and omissions complained of herein.

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28 ¹ <https://www.ahmchealth.com/>

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

6 **PAGA ALLEGATIONS**

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

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

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

1 alleged in this Complaint and filed notice of the violations online with the Labor and
2 Workforce Development Agency (“LWDA”).

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

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

10 FACTUAL ALLEGATIONS

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

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

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

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

16 17. Based on information and belief, the DEFENDANTS time and pay records
17 for the Aggrieved Employees reveal late, short and/or missed first and second meal
18 periods with no meal period premiums paid during those pay periods. Upon information
19 and belief, DEFENDANTS did not pay a civil penalty under PAGA to the LWDA or the
20 Aggrieved Employees for each of those meal period violations for which
21 DEFENDANTS did not provide a meal period premium.

22 18. Moreover, upon information and belief, in the event DEFENDANTS did
23 pay meal and/or rest period premiums to PLAINTIFF or Aggrieved Employees for
24 missed, late, short or interrupted meal periods, DEFENDANTS did not pay a
25 corresponding civil penalty under PAGA to the LWDA, PLAINTIFF or the Aggrieved
26 Employees in addition to the meal period premium payments made to PLAINTIFF and
27 Aggrieved Employees.
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1 19. Based on further information and belief, DEFENDANTS rounded the start
2 and end times of PLAINTIFF and Aggrieved Employees' meal periods resulting in
3 PLAINTIFF and other Aggrieved Employees not being paid for all hours worked as well
4 as late, shortened, or interrupted meal periods. Based on information and belief,
5 DEFENDANTS did not have a written meal break policy, nor did DEFENDANTS have
6 a compliant meal break practice.

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

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

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

26 23. Per DEFENDANTS' unlawful rest policy and/or practice, PLAINTIFF
27 and other Aggrieved Employees were not adequately informed, authorized, instructed
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1 about, nor permitted an opportunity to take proper rest breaks.

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

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

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

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

1 28. Moreover, upon information and belief, DEFENDANTS did not pay
2 premium wages at the regular rate of compensation to the Aggrieved Employees for
3 these on-duty, missed, late, shortened or interrupted rest periods. Upon information and
4 belief, DEFENDANTS also failed to pay a civil penalty under PAGA to the LWDA or
5 the Aggrieved Employees for each of those rest period violations for which
6 DEFENDANTS did not provide a rest period premium.

7 29. Moreover, upon information and belief, in the event DEFENDANTS did
8 pay rest period premiums to PLAINTIFF or Aggrieved Employees for missed, late, short
9 or interrupted rest periods, DEFENDANTS did not pay a corresponding civil penalty
10 under PAGA to the LWDA, PLAINTIFF or the Aggrieved Employees in addition to the
11 rest break premium payments made to PLAINTIFF and Aggrieved Employees.

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

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

8 32. DEFENDANTS also required PLAINTIFF and other Aggrieved
9 Employees to complete other off-the-clock work such as continued education related to
10 medical licensing and/or mandatory company trainings. PLAINTIFF and Aggrieved
11 Employees were not paid for all off-the-clock work, thereby resulting in unpaid
12 minimum and overtime wages.

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

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

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

12 36. **Untimely Payment of Wages:** Pursuant to California Labor Code section
13 204, for all labor performed between the 1st and 15th days of any calendar month,
14 DEFENDANTS are required to pay their employees between the 16th and 26th day of the
15 month during which the labor was performed. California Labor Code § 204 also provides
16 that for all labor performed between the 16th and 26th days of any calendar month,
17 Defendants are required to pay their employees between the 1st and 15th day of the
18 following calendar month. In addition, California Labor Code § 204 provides that all
19 wages earned for labor in excess of the normal work period shall be paid no later than
20 the payday of the next regular payroll period. Throughout the relevant time period,
21 DEFENDANTS knowingly and willfully failed to pay Plaintiff

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

9 39. **Refusal to Make Payment:** DEFENDANTS also violated Labor Code §
10 216 by failing to pay PLAINTIFF and the Aggrieved Employees for all hours worked at
11 the proper wage rate and by failing to pay PLAINTIFF and all Aggrieved Employees an
12 additional hour of pay for each meal or rest period not provided or that was invalid.
13 *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

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

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

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

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

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

14 45. DEFENDANTS further failed to put PLAINTIFF and the Aggrieved
15 Employees on notice of their paid sick leave rights – or thereby putting their entitlement
16 to sick leave in a Labor Code § 2810.5 notice.

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

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

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

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

18 50. Upon information and belief, DEFENDANTS required PLAINTIFF and
19 the Aggrieved Employees to submit or agree to submit to unlawful criminal and/or
20 financial background checks as a condition of obtaining and/or holding employment in
21 violation of Labor Code §§ 1024.5, 432.7, and/or 432.5. DEFENDANTS also required
22 PLAINTIFF and the Aggrieved Employees to agree in writing to unlawful background
23 checks not in conformance with the requirements of the Investigative Consumer
24 Reporting Agencies Act, Civil Code §§ 1786, *et seq.* ("ICRAA"), and the Fair Credit
25 Reporting Act, 15 U.S.C. §§ 1681, *et seq.* ("FCRA"), and thus required Aggrieved
26 Employees to agree (in writing) to an unlawful background check as a condition of
27 employment, in violation of Labor Code § 432.5.
28

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

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

15
16 **FIRST CAUSE OF ACTION**
17 **VIOLATION OF CALIFORNIA LABOR CODE PRIVATE**
18 **ATTORNEYS GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET**
19 **SEQ.**
20 **(On behalf of Plaintiff, Aggrieved Employees, and the State of California**
21 **against all Defendants)**

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

24 **Failure to Keep Accurate Records**

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

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

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

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

24 58. DEFENDANTS' failure to keep "accurate and complete" payroll records
25 for PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198,
26 1199, and Wage Order 4-2001 (And All Applicable IWC Orders), § 7. These violations
27 subject DEFENDANTS to civil penalties under Labor Code §§ 558.1, 226.6, 1174.5 and
28

1 2699. Each violation of each Labor Code section and Wage Order provision, for each
2 Aggrieved Employee, results in a separate civil penalty.

3 **Meal Period Violations**

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

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

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

1 DEFENDANTS.

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

9 63. An employer's payment of a meal period premium "does not excuse a
10 section 226.7 violation." *Kirby v. Immoos Fire Protection, Inc.* (2012) 53.Cal.4th 1244,
11 1256-57.

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

22 65. PLAINTIFF and the Aggrieved Employees were unable to take timely,
23 thirty-minute uninterrupted meal periods. Based on PLAINTIFF's and Aggrieved
24 Employees' work schedules, PLAINTIFF and other Aggrieved employees were entitled
25 to at least one timely, uninterrupted thirty-minute meal period per shift. However, due
26 to the assigned work schedule and/or commentary from supervisors pressuring them to
27 take non-complaint meal periods or skip meal breaks completely, PLAINTIFF and other
28

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

11 66. Upon information and belief, DEFENDANTS also failed to pay a civil
12 penalty under PAGA to the LWDA or the Aggrieved Employees for each of those meal
13 period violations for which DEFENDANTS did not provide a meal period premium.

14 67. Moreover, upon information and belief, in the event DEFENDANTS did
15 pay meal period premiums to PLAINTIFF or Aggrieved Employees for missed, late,
16 short or interrupted meal periods, DEFENDANTS did not pay a corresponding civil
17 penalty under PAGA to the LWDA, PLAINTIFF or the Aggrieved Employees in
18 addition to the meal period premium payments made to PLAINTIFF and Aggrieved
19 Employees. Therefore, DEFENDANTS failed to pay and continue to fail to pay the civil
20 penalty under PAGA for each of the above-described meal period violations.
21 PLAINTIFF seeks to recover those unpaid civil penalties under PAGA on behalf of
22 herself and the other Aggrieved Employees for each meal period violation evidenced by
23 DEFENDANTS' payment of a meal period premium on an Aggrieved Employee's wage
24 statement.

25 68. Based on further information and belief, DEFENDANTS rounded the start
26 and end times of PLAINTIFF and Aggrieved Employees' meal periods resulting in
27 PLAINTIFF and other Aggrieved Employees not being paid for all hours worked as well
28

1 as late, shortened, or interrupted meal periods.

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

6 70. Based on information and belief, DEFENDANTS did not have a compliant
7 written meal break policy, nor did DEFENDANTS have a compliant policy in practice.
8 Liability for the Aggrieved Employees can be established by evidence that an employer
9 adopted a uniform corporate break policy that failed to give full effect to California law
10 and the applicable Wage Order requirements. The fact that employees may legally waive
11 meal breaks does not affect this result. *Brinker Restaurant Corp. v. Superior Court*
12 (2012) 53 Cal.4th 1004.

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

19 72. The aforementioned conduct results in violations of Labor Code §§ 226.7,
20 512, and 1198-1199, and all applicable IWC Wage Orders, including §11(A) and (C).
21 These violations subject DEFENDANTS to civil penalties under Labor Code §§ 558.1,
22 558 and 2699, and all applicable IWC Wage Orders, §20.

23 **Rest Period Violations**

24 73. Under the IWC Wage Orders and Labor Code § 226.7, an employer must
25 authorize or permit an employee to take a net ten-minute rest period for every four hours
26 worked, or major fraction thereof, and such rest periods must be in the middle of the
27 four-hour period insofar as practicable. The rest period requirement obligates employers
28

1 to permit and authorize employees to take off-duty rest periods, meaning employers must
2 relieve employees of all duties and relinquish control over how employees spend their
3 time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. If the employer
4 fails to provide any required rest periods or fails to provide a fully compliant net 10-
5 minute rest break wherein the employee is fully relieved of all duties and all employer
6 control, the employer must pay the employee one hour of pay at the employee's regular
7 rate of compensation for each workday the employer did not provide a legally required
8 and/or fully compliant rest period.

9 74. At all times mentioned herein, DEFENDANTS had policies and
10 procedures that failed to authorize and/or permit net ten minutes of rest based upon the
11 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
12 or major fraction thereof worked. As a result, PLAINTIFF and the other Aggrieved
13 Employees did not receive all legally required rest periods, as DEFENDANTS did not
14 authorize nor permit all required rest periods in strict accordance to, and in compliance
15 with, the timing requirements of all applicable Wage Orders.

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

24 76. Despite not providing lawful rest periods during the PAGA Period,
25 DEFENDANTS failed to pay PLAINTIFF and other Aggrieved employees with an
26 additional hour of pay at the employee's regular rate of compensation for each missed
27 or unlawful rest period.
28

1 77. In addition, PLAINTIFF and the Aggrieved Employees remained subject
2 to DEFENDANTS' control throughout the purported rest period as they were often
3 unable to take duty-free rest breaks. PLAINTIFF and the Aggrieved Employees were
4 constantly interrupted by DEFENDANTS' work-related communications and/or tasks.
5 For example, the rest break rooms at San Gabriel Valley Medical Center contained a
6 company phone that rang during rest breaks when a patient needed assistance. As such,
7 PLAINTIFF and Aggrieved Employees' rest breaks were interrupted, cut short, or not
8 provided.

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

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

22 80. By failing to provide lawful ten (10) minute rest periods for every four (4)
23 hours or major fraction thereof, and by failing to provide compensation at the employee's
24 regular rate of compensation for unlawful rest periods in lieu thereof, DEFENDANTS
25 willfully violated Labor Code §§ 226.7, 512, and 1198-1199, and IWC Wage Order 4-
26 2001, §12. These violations subject DEFENDANTS to civil penalties under Labor Code
27 §§ 558 and 2699, and Wage Order 4-2001, §20.
28

1 81. Upon information and belief, DEFENDANTS also failed to pay a civil
2 penalty under PAGA to the LWDA or the Aggrieved Employees for each of those rest
3 period violations for which DEFENDANTS did not provide a rest period premium.

4 82. Moreover, upon information and belief, in the event DEFENDANTS paid
5 rest period premiums to PLAINTIFF or Aggrieved Employees for missed, late, short or
6 interrupted rest periods, DEFENDANTS did not pay a corresponding civil penalty under
7 PAGA to the LWDA, PLAINTIFF or the Aggrieved Employees in addition to the rest
8 break premium payments made to PLAINTIFF and Aggrieved Employees. Therefore,
9 DEFENDANTS failed to pay and continue to fail to pay the civil penalty under PAGA
10 for each of the above-described rest period violations. PLAINTIFF seeks to recover
11 those unpaid civil penalties under PAGA on behalf of herself and the other Aggrieved
12 Employees for each rest period violation evidenced by DEFENDANTS' payment of a
13 rest period premium to an Aggrieved Employee.

14 **Minimum and Overtime Wage Violations**

15 83. 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 § 1197 and the applicable wage order.
18 California law also provides employees in California must be paid overtime, equal to 1.5
19 times the employee's regular rate of pay for all hours worked in excess of 40 per week
20 or 8 per day and must be paid double wages for all hours worked in excess of 12 hours
21 per day. *See* Labor Code § 510 and the applicable Wage Order § 3. Employers must pay
22 overtime equal to double the regular hourly rate of pay for each hour worked beyond
23 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on
24 the seventh consecutive day of work in a work week. *Ibid.* PLAINTIFF and the
25 Aggrieved Employees regularly worked hours, including overtime hours, for which they
26 were not compensated by DEFENDANTS as required by California law.

1 84. 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 85. Moreover, based on information and belief, DEFENDANTS maintained a
11 policy and practice of time-rounding that as applied systematically deprived PLAINTIFF
12 and Aggrieved Employees of compensable time because the time-rounding system
13 implemented by DEFENDANTS would almost always, if not always, understate actual
14 compensable work time. Through the operation of DEFENDANTS' time-shaving/ time-
15 rounding system, PLAINTIFF and other Aggrieved Employees were systematically
16 deprived of compensable time, resulting in minimum wage and overtime violations.

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

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

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

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

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

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

1 DEFENDANTS' failure to average the rates of pay when calculating overtime resulted
2 in underpaid overtime at times, as well as inaccurate and incomplete wage statements.

3 92. California Labor Code sections 551 and 552 require that every person
4 employed in any occupation of labor is entitled to one day's rest in a seven-day
5 workweek, that no employer of labor shall cause his employees to work more than six
6 days in a workweek, and that an employer shall pay a civil penalty in the amounts of
7 fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation
8 and one hundred dollars (\$100) for each aggrieved employee per pay period for each
9 subsequent violation.

10 93. During the relevant time period, PLAINTIFF and the other Aggrieved
11 Employees were required to regularly and/or consistently work in excess of six (6) days
12 in a workweek. During the relevant time period, PLAINTIFF and the other Aggrieved
13 Employees were required to work in excess of thirty (30) hours in a week and/or six (6)
14 hours in any one (1) day thereof, during workweeks in which they were required to work
15 in excess of six (6) days. During the relevant time period, PLAINTIFF and the other
16 Aggrieved Employees were required to work in excess of six (6) days in a workweek
17 without accumulating or being provided the opportunity to take at least one (1) day of
18 rest, and when PLAINTIFF and the other Aggrieved Employees accumulated days of
19 rest, they were not actually provided the opportunity to take the equivalent of one (1)
20 day's rest in seven (7) during each calendar month.

21 94. These violations subject DEFENDANTS to civil penalties under Labor
22 Code §§ 1197.1, 1198, 1199, 558, 558.1, 218.5, 2699, and Wage Order 4-2001 (and all
23 applicable IWC Wage Orders).

24 **Statutory Wage Violations**

25 95. California Labor Code section 223 makes it unlawful for an employer to
26 secretly pay wages lower than required by statute while purporting to pay legal wages.
27 As described above, DEFENDANTS willfully and systematically denied PLAINTIFF
28

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

10 **Refusal to Make Payment**

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

19 **Standard Conditions of Labor Violations:**

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

3 **Business Expense Violations**

4 98. California law requires employers to indemnify their employees for all
5 necessary expenditures incurred by the employee in direct consequence of the discharge
6 of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code
7 §§ 2800, 2802(a) and Wage Order 1-2001, § 9(b). Furthermore, “for purposes of [section
8 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs,
9 including, but not limited to, attorneys’ fees incurred by the employee enforcing the
10 rights granted by this section.”

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

25 100. Despite being aware of these business expenses, DEFENDANTS failed to
26 reimburse PLAINTIFF and other Aggrieved Employees for such business expenses in
27 violation of California Labor Code § 2802, which requires employers to “indemnify his
28

1 or her employee for all necessary expenditures and losses incurred by employees.” In
2 turn, there constitutes a PAGA violation based on a violation of California Labor Code
3 § 2802 and the applicable Wage Order.

4 **Wage Statement Violations**

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

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

22 103. DEFENDANTS failed to provide accurate, itemized wage statements in
23 violation of Labor Code § 226(a) by, including but not limited to, failing to accurately
24 reflect the wages paid and/or due to Aggrieved Employees, including among other
25 things, meal and rest period premium payments based on the meal and rest period
26 violations discussed above.

27 104. Aa result of DEFENDANTS’ violations of various Labor Code and Wage
28

1 Order provisions, as discussed herein, DEFENDANTS failed to provide accurate wage
2 statements with respect to multiple categories set forth in Labor Code § 226, causing
3 confusion to PLAINTIFF and the Aggrieved Employees over whether they were
4 compensated for all hours worked. PLAINTIFF and Aggrieved Employees were injured
5 by DEFENDANTS' failure to provide accurate wage statements.

6 105. As a result, these violations subject DEFENDANTS to civil penalties
7 under Labor Code § 226.3.

8 **Sick Leave Violations**

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

19 107. In violation of Labor Code § 247.5, DEFENDANTS also failed to maintain
20 records documenting the hours worked and paid sick days accrued and used by
21 PLAINTIFF and other Aggrieved Employees, permitting the presumption that Plaintiff
22 and other Aggrieved Employees were entitled to the maximum number of hours
23 accruable at the time of their respective terminations. DEFENDANTS further failed to
24 comply with Labor Code § 246 by failing to provide its employees with wage statements
25 or separate documents showing the amount of paid sick leave available, or paid time off
26 leave in lieu of sick leave. For example, on April 23, 2021, DEFENANTS provided
27 PLAINTIFF with a wage statement that did not list the balance of PLAINTIFF's
28

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

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

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

15 **Untimely Payment of Wages During Employment**

16 110. PLAINTIFF is informed and believes, and based thereon alleges, that
17 DEFENDANTS knew or should have known that PLAINTIFF and the other Aggrieved
18 Employees were entitled to receive all wages owed to them during their employment.

19 111. California Labor Code § 204 requires that all wages earned by any person
20 in any employment between the 1st and 15th days of any calendar month are due and
21 payable between the 16th and 26th day of the month during which the labor was
22 performed, and that all wages earned by a person in any employment between the 16th
23 and last day day of any calendar month are due and payable between the 1st and 15th day
24 of the following calendar month. Labor Code § 204 also requires that all wages earned
25 for labor in excess of the normal work period shall be paid no later than the payday for
26 the next regular payroll period.

27 112. During the relevant time period, PLAINTIFF and the other Aggrieved
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1 Employees did not receive payment from DEFENDANTS all wages, including
2 overtime and minimum wages and meal and rest period premiums, within the
3 permissible time as required by California Labor Code § 204. In further violation of
4 Labor Code § 204, DEFENDANTS also failed to provide PLAINTIFF and the other
5 Aggrieved Employees all wages earned for labor in excess of the normal work period
6 by no later than the payday of the next regular payroll period.

7
8 113. DEFENDANTS' failure to timely pay wages to PLAINTIFF and the other
9 Aggrieved Employees during employment in accordance with Labor Code § 204
10 constitutes unlawful and/or unfair activity prohibited by California law.

11 **Untimely Payment of Final Wages**

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

23 115. DEFENDANTS failed to timely pay Aggrieved Employees who are no
24 longer employed by DEFENDANTS all wages that were due and owing upon
25 termination or resignation. Upon separation of employment, Aggrieved Employees'
26 final paycheck were not timely provided, and Aggrieved Employees' final paychecks,
27 once provided did not include the following: (1) all owed minimum wages, (2) all owed
28 overtime wages, (3) all owed premium wages, and (4) all owed sick pay. As a result,

1 DEFENDANTS violated Labor Code §§ 201, 202, and 203. These violations subject
2 DEFENDANTS to civil penalties under Labor Code §§ 203, 210, and/or 256.

3 116. Pursuant to Labor Code section 203, an employer that willfully fails to pay
4 wages due an employee who is terminated or resigns must pay (in addition to the unpaid
5 wages) a penalty equal to the employee's daily wages for each day, not exceeding 30
6 days, that the wages are unpaid. Case law clarifies this 30-day waiting time penalty is
7 recoverable under the PAGA via Labor Code § 256. *Iskanian v. CLS Transportation*
8 *Los Angeles, LLC* (2014) 59 Cal.4th 348; *Caliber Bodyworks, Inc. v. Superior Court*
9 (2005) 134 Cal.App.4th 365.

10 **Background Check Violations**

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

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

7 119. DEFENDANTS knew that requiring PLAINTIFF and Aggrieved
8 Employees to agree in writing to these criminal and/or financial background checks as a
9 condition of obtaining and/or holding employment was unlawful.

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

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

25 122. Under California Government Code § 12952 (California’s “Fair Chance
26 Act”) provides: “... it is an unlawful employment practice for an employer with five or
27 more employees to do any of the following: (1) To include on any application of
28

1 employment, before the employer makes a conditional offer of employment to the
2 applicant, any question that seeks the disclosure of an applicant's conviction history.”
3 Upon information and belief, DEFENDANTS asked Aggrieved Employees to disclose
4 convictions in writing as part of the application process and prior to extending an offer
5 of employment. By asking about convictions at the application phase or prior to
6 extending an employment offer, DEFENDANTS violated California's Fair Chance Act,
7 and thereby violated Labor Code § 432.5 by unlawfully requiring the Aggrieved
8 Employees to agree in writing to disclose arrests or convictions as a condition of
9 employment.

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

13 124. Under the provisions of PAGA and the above mentioned Labor Code
14 sections, including but not limited to: Labor Code §§ 201, 202, 203, 204, 210, 216, 218.5,
15 218.6, 221, 222, 223, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 245-248.5, 256, 432, 432.5,
16 432.7, 510, 512, 551, 552, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197,
17 1197.1, 1198, 1199, 2698, 2699, 2699.3, 2699.5, 2800, 2802, and 2810.5, all applicable
18 Wage Orders, as well as all interpretations of these laws by California Courts and
19 administrative bodies, as well as any other law that is enforceable through PAGA,
20 DEFENDANTS are liable for the following penalties:

21 a. All statutorily-specified penalties recoverable under PAGA as enumerated
22 in the relevant California Labor Code provisions listed herein only if permitted by the
23 PAGA statute, pursuant to Labor Code § 2699(a); and

24 b. Default PAGA penalties for any violation of the enumerated list of Labor
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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”).

1 Code violations without a civil penalty recoverable under the PAGA, all in the default
2 amounts provided by Labor Code § 2699(f).

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

6 125. Pursuant to Labor Code § 2699(g), and/or any and all other applicable
7 laws, PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.
8

9
10 **PRAYER FOR RELIEF**

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

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

17 Dated: September 17, 2024

CROSNER LEGAL, P.C.

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19
20 /s/ Chad Saunders
Chad Saunders, Esq.

21 Attorneys for Plaintiff,
22 RUTHIE BRASWELL
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